

Case Study: Dutch banks and tax avoidance

A research paper prepared for the Eerlijke Bankwijzer (Dutch Fair Bank Guide)



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Bankwijzer (Dutch Fair Bank Guide)

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Publication date: 3 September 2014



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Summary

Governments need tax payments to stimulate national prosperity, welfare and an equitable economic development. Only through levying taxes they can fund facilities such as infrastructure, education, healthcare and a social safety net. Companies can contribute to these public facilities by paying a fair amount of tax. All countries, but especially developing countries need additional income to realise the mentioned facilities, and it is a heavy burden that companies and wealthy individuals avoid taxes on a large scale.

Each year developing countries miss an estimated US\$ 104 billion of tax revenues due to corporate tax avoidance.¹ Next to this, global tax avoidance due to undeclared private assets held offshore amounts to approximately US\$ 156 billion per year.² Not only developing countries miss out on significant tax revenues. Tax avoidance also takes place in countries that are members of the OECD.

Tax avoidance is a problem for everyone and provides relatively little benefits. This is the case for both poor and rich countries, and for both citizens and small and medium-sized enterprises. The premise of this case study is that companies should pay taxes where their economic activities take place. Taxation should be based on the nature and scope of the economic activities (the *substance*) which companies have in each jurisdiction they are active in, in accordance with the applicable tax regulations in these jurisdictions. Individuals with large financial wealth should also pay their fair share of taxes.

In this case study tax avoidance is defined as all practices of individuals and organisations which are intended to avoid the payment of taxes, whereby:

- tax laws are not formally contravened, discerning tax avoidance from tax evasion which implies the use of illegal practices;
- the intentions of tax laws are violated, i.e. loopholes in tax laws are used to obtain tax advantages that the government never intended;
- transactions do not follow logically from the economic “substance” (assets, employees, revenues, etc.) of the company but are set up with the purpose to reduce tax liability.

While tax avoidance does occur within the boundaries of one jurisdiction, this study focuses on international tax avoidances which aim to exploit differences in tax rates and regulations between jurisdictions, as well as the limited international exchange of fiscal data.

International transactions between companies which are based in different jurisdictions but belong to the same business group, offer many options for tax avoidance schemes.

Multinationals can reorganize their financial flows (payments for goods and services, dividends, interest payments, etc.) and set up foreign subsidiaries which undertake no real economic activities, for the sole purpose of utilizing the differences in tax rates and regulations between jurisdictions. With such transactions often no tax laws are violated officially. Nevertheless, the tax regulations and tax rates in one jurisdiction are undermined by making use of more favourable tax regulations in another jurisdiction.

In many international tax avoidance structures tax havens play a prominent role. Tax havens are jurisdictions which have a legislative environment which provides opportunities to individuals and/or companies domiciled elsewhere to evade or avoid taxes due in other jurisdictions. *Classic tax havens* generally offer very low income tax rates and no withholding taxes, in combination with very limited disclosure requirements for companies and limited exchange of fiscal data with other jurisdictions. *Tax-treaty jurisdictions* generally have concluded tax treaties with many countries and have very low withholding tax rates, enabling financial flows to pass through the jurisdiction easily. In these jurisdictions, income taxes usually have a normal level and transparency is higher than in classic tax havens.

Dutch banking groups and international tax avoidance

In this case study we researched whether there are indications that ten Dutch banking groups are involved in international tax avoidance. There are three ways in which banking groups can be involved in international tax avoidance:

- **The banks own payments:** a banking group may shift costs and revenues between its subsidiaries in various jurisdictions in a way which does not reflect the economic substance of each subsidiary, but which solely aims to minimize the total tax payments of the banking group;
- **Services to corporate clients:** a banking group may - individually or together with other service providers - offer companies services that enable them to shift their financial flows between different jurisdictions in a way which does not reflect the economic substance of each entity, but which solely aims to minimize the company's total tax payments;
- **Services to private clients:** a banking group may facilitate tax avoidance or evasion by wealthy individuals, e.g. by offering bank accounts or asset management services from jurisdictions that do not exchange information about financial assets with (some) foreign tax authorities.

The case study researched whether there are indications that the Dutch banking groups are involved in any of these three ways of international tax avoidance. The Dutch banking groups researched in this case study are:

- ABN Amro Bank
- Aegon, as the parent company of Aegon Bank and Knab
- ASN Bank³
- Delta Lloyd, as the parent company of Delta Lloyd Bank
- ING Group, as the parent company of ING Bank
- NIBC
- Rabobank Group, as the parent company of Rabobank and Friesland Bank
- SNS Reaal, as the parent company of SNS Bank and Regio Bank
- Triodos Bank
- Van Lanschot

The research on indications of international tax avoidance is approached from two angles, described below.

Subsidiaries and funds in tax havens

As a first step we checked for every banking group whether it has set up one or more subsidiaries or investment funds in *classic tax havens* and/or *tax treaty jurisdictions* (in short: *tax havens*). To identify which jurisdictions qualify as *tax havens*, we used the recommendations from OCRA Worldwide - a global market leader in establishing and managing companies in tax havens - and the list provided by the Tax Justice Network which identifies tax havens and offshore finance centres.

As far as possible we checked the company registers of these tax havens to identify the subsidiaries of the banking groups registered in these jurisdictions. Additionally, we based our research on the most recent subsidiary list deposited by the banking groups themselves at the Dutch company register.

As far as possible, subsidiaries which were already dissolved were filtered out - but this was not always possible from the data available. Also, subsidiaries taken over by other companies (for instance in relation to the split up of ABN Amro Bank after 2007) were as far as possible filtered out.

Despite these efforts to reduce the list, we still identified 314 subsidiaries for 9 Dutch banking groups in 17 different tax havens. The results were shown to each bank first, which resulted in a significant reduction of the list, for instance because the banking group indicated that some subsidiaries were already dissolved, in liquidation or planned to be liquidated.

For the remaining subsidiaries we assessed if they could be involved in forms of international tax avoidance by the banking group itself or by its - corporate or private - clients. This assessment raised questions rather than drawing definitive conclusions, which clearly is impossible given the limited information provided by the banks.

The questions were submitted to the banking groups, which generally answered by providing additional information and clarifications. As a result, some questions were answered satisfactorily and were dropped. But some questions were not answered satisfactorily and the information provided by the banks also gave rise to new questions. The “Conclusions” section summarizes for which banks questions remain open.

Special purpose vehicles for international loans or issuances

As a second research step we researched whether, over the last three years, banks have had a leading position in international loans and/or issuance syndicates dealing with “special purpose vehicles” in an “offshore jurisdiction”. These are subsidiaries in tax havens, specifically set up by a company to attract an international bank loan or issue bonds on the international capital market.

The “special purpose vehicle” has no economic substance (no employees nor other activities), but formally attracts the loan (or issues the bonds). The money attracted can be lent to the parent company or another subsidiary in need of financing. Or the “special purpose vehicle” can invest the funds in assets (e.g. shares of other companies, ships, a.o.) which can easily be managed by another group subsidiary in another country, which does have substance.

In general, an important reason to set up an “special purpose vehicle” as an intermediate is often the wish to reduce payments of income and/or withholding taxes. For every bank we looked for recent examples of their participation in syndicates which provided loans to special purpose vehicles, or helped special purpose vehicles with issuing bonds. For these examples we aimed to analyse what kind of tax advantages this construction might offer to the parent company, the actual bank client.

ABN Amro, ING, NIBC and Rabobank were found to be involved in loans and/or bond issuances on behalf of one or more special purpose vehicles in the past three years. None of these special purpose vehicles seemed to have substance and all were set up in tax havens. The banks involved were asked if they could clarify which steps they had taken to exclude the possibility that these special purpose vehicles are involved in forms of international tax avoidance. While the banks provided clarifications and additional information, questions remain on most of these financing deals. The “Conclusions” section summarizes for which banks questions remain open.

Conclusions

This case study researched whether there are indications that Dutch banking groups are involved in international tax avoidance. Because of a lack of information provided by most of the banks on the exact activities, assets, employees, costs, profits, taxes paid and customers of the banks' subsidiaries and funds in tax havens, as well as a similar lack of information for the special purpose vehicles to which some banks have provided services, no definitive conclusions can be drawn.

This report reflects the intermediate results of a process of raising questions to the banks and analysing the answers. As a snapshot in this process, this report concludes that it would be good if the following banking groups would provide further clarification on how they exclude any involvement in the three types of international tax avoidance:

- **Questions on the bank's own tax payments:**
 - Aegon: reinsurance activities in Bermuda;
 - Delta Lloyd: investment fund in Ireland;
 - Rabobank: funding activities on Curacao;
- **Questions on services to corporate clients:**
 - ABN Amro: joint-ventures with shipping companies in tax havens; loans to special purpose vehicles in tax havens; loans to companies (possibly) involved in tax avoidance;
 - ING: loans to special purpose vehicles in tax havens; loans to company possibly involved in tax avoidance;
 - NIBC: loan to special purpose vehicle on the Cayman Islands;
 - Rabobank: the Delaware joint-ventures and subsidiaries on the Cayman Islands, Luxembourg and Mauritius; loan to special purpose vehicle on the Cayman Islands; loans to company possibly involved in tax avoidance;
- **Questions on services to private clients:**
 - ABN Amro: private banking in Jersey, Guernsey and Luxembourg;
 - Aegon: investments funds on the Cayman Islands;
 - Delta Lloyd: investment funds in Luxembourg;
 - ING: investment funds on the Cayman Islands and in Luxembourg;
 - Van Lanschot: private banking in Switzerland and investment funds in Luxembourg.

Recommendations by the Dutch Fair Bank Guide (Eerlijke Bankwijzer)

While the Dutch banking groups all claim that they are not involved in international tax avoidance, this report shows that their international investments and services raise many questions which have not always been answered satisfactorily. According to the Fair Bank Guide, banks should be more transparent on this sensitive issue, and act responsibly when making decisions that possibly could lead to forms of international tax avoidance. Banks should comply to the fullest extent possible to the OECD Guidelines for Multinational Enterprises' chapter about taxation, which says, "Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them,"⁴ as well as measures following from the ongoing OECD initiative against base erosion and profit shifting (BEPS).⁵

Therefore, the Fair Bank Guide gives the following recommendations to the Dutch banking groups:

1. Provide clear country-by-country reporting

Not all Dutch banks active in more than one country have published an overview yet of their employees and operating income per country for the year 2013, although this overview should have been published by 1 July 2014 according to the concept version of the “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten” (Regulation on publication requirements following from the EU capital requirements directive) issued by the Ministry of Finance. Of the banks with operations abroad, ABN Amro, Delta Lloyd, ING, NIBC, Triodos and Van Lanschot have published the required information, while Rabobank did not. This Dutch regulation is expected to enter into force in the coming months. It will require more detailed country-by-country reporting - including data on profits and taxes per country - to be published together with the banks’ annual reports, starting with the report on the financial year 2014.

The Fair Bank Guide strongly supports this regulation and calls on the banks to report timely following the letter and the intention of the regulation. This means, for instance, that banks should also report on countries where they only have minority shares in one or more joint-ventures or associates.

2. Publish a complete list of subsidiaries of the banking group

Most banking groups do not publish a list with all subsidiaries in their annual reports or on their websites. Following legal requirements, these lists are only deposited at the Dutch company register from where they cannot be retrieved easily. Also the lists deposited are often outdated.

The Fair Bank Guide therefore recommends all Dutch banking groups to publish and regularly update a complete list of all of their subsidiaries, branches, joint-ventures and associates - and the fund structures managed by them - in their annual reports and on their websites. The list should at least indicate in which countries the entities are located, for which percentages they are owned and/or controlled by the banking group and which activities the entity undertakes.

3. Pay more attention to tax payments by private clients

Several banking groups provide banking or investment management services from tax havens or use fund structures set up in tax havens. In general, this involves a risk of enabling tax avoidance or evasion by private clients. How large this risk is and to which investors from which countries it applies, differs per tax haven. Therefore it is important that banks become transparent about the size of investments managed through these entities for different types of investors - broken down by country of residence of the investors. It would be good if banks also clarify how they ensure that the beneficial owners of bank accounts and investments report these to the tax authorities in their countries of residence.

4. Make your tax policy more ambitious

Most banking groups write in their policies that they will not participate in transactions when these are intended for international tax avoidance. While this is a good first step, the Fair Bank Guide does not think this is sufficiently ambitious. Banks should be clear that they do not want to provide financial services to special purpose vehicles which are set up to avoid taxes by their corporate clients. The relevant question is not whether the bank plays an active role in the tax avoidance structure, but whether the client operates according to the tax morale of the bank. If this is not the case, the bank should discuss with the client how to provide its services via a structure that is more in line with the intended purpose of tax laws or - if the client is not willing to engage in such dialogue - withhold its services.

5. Sharpen your tax morale on double taxation

When confronted with questions on their subsidiaries and fund structures in tax havens, as well on their services to special purpose vehicles, banks often respond that these are “only intended to avoid double taxation”. This response does not provide a proper justification, though. Each (democratic) state has the sovereign right to set its own tax regulations and tax rates. And each state may decide itself with which other jurisdictions it wants to conclude tax treaties that provide exceptions on these tax regulations and tax rates.

When a bank or a company operates from a certain jurisdiction, it has to accept its regulations, tax rates and tax treaties. This can imply that certain international transactions would be taxed double. While this can prevent certain transactions from happening - and therefore can imply a loss of business for the company or bank - it does not justify setting up a shell company or fund structure without substance in a tax haven, just “to avoid double taxation”. Such a structure may result in companies or banks obtaining tax benefits that were not intended for them or, sometimes inadvertently, enabling double non-taxation of creditors or investors located in tax havens. Banks and companies should accept and respect the tax system in the countries in which they operate or want to operate in letter and spirit.

The Fair Bank Guide recommends banking groups to make clear to their employees and their clients that avoiding double taxation is a flawed argument to justify artificial structures and undermines the right of governments to establish a tax system for their country.

6. Improve due diligence on possible international tax avoidance

Tax policies need to be implemented by rigorous due diligence practices. When confronted with a special purpose vehicle set up by a client or with a subsidiary or fund set up in a tax haven by another division of the banking group, a more rigorous assessment is needed of the logic behind this choice. Different from what banking groups communicated within the context of this case study, the initial assumption should not be that the structure is legitimate from a tax perspective. The initial assumption should be that setting up companies without substance or fund structures in tax havens is not advisable, unless there are clear and legitimate arguments to do so and the possibility that the structure is used for tax avoidance is excluded.

Additionally to these recommendations to the banks themselves, the Fair Bank Guide recommends the Dutch government to:

1. Further research the questions raised in this report

This research project could not draw final conclusions if one or more of the Dutch banking groups are involved in forms of international tax avoidance, because crucial data are lacking. The report does, however, raise some important questions for most of the banking groups which were not answered satisfactorily yet and could not yet exclude the possibility of their involvement in tax avoidance. The Dutch government and tax authorities could follow up on these questions and ask the Dutch banking groups to provide meaningful answers to these questions.

2. Improve the collaboration with other jurisdictions

In July 2013, an Action Plan on *Base Erosion and Profit Shifting (BEPS)* was presented by the OECD. The Action Plan consists of fifteen action points that would be examined further in the next 18 to 24 months.⁶ This is a first good step towards the establishment of a better international tax system, but it is not enough. Major EU member states, including The Netherlands, and other OECD countries have to cooperate stronger to prevent tax avoidance and evasion practises. This research project shows that Dutch banks could possibly be related to the avoidance of taxes due to differences in tax

legislation across the world. The Dutch government and Dutch tax authorities should not merely focus on possible implications for Dutch taxes, but should support a multilateral system of automatic data exchange on private financial assets that works for developing countries as well.

3. Stimulate country-by-country reporting by banks

The final “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten” should be issued by the Ministry of Finance as soon as possible, to make full country-by-country reporting possible when the annual reports on 2014 are published. Banks should be encouraged to report following the letter and the intention of the regulation. This means, for instance, that banks should also report on countries where they only have minority shares in one or more joint-ventures or associates.

4. Make publication of all subsidiaries and funds obligatory

All Dutch banking groups should be required to publish and regularly update a complete list of all of their subsidiaries, branches, joint-ventures and associates - and the fund structures managed by them - in their annual reports and on their websites. The list should at least indicate in which countries these entities are located, for which percentages they are owned by the banking group and which activities the entity undertakes.

Samenvatting

Overheden hebben belastingbetalingen nodig voor het creëren van nationale welvaart en een stabiel ondernemingsklimaat. Op deze manier kunnen ze investeren in faciliteiten als infrastructuur, onderwijs, gezondheidszorg en een sociaal vangnet. Bedrijven kunnen aan deze publieke faciliteiten bijdragen door een redelijk bedrag aan belasting te betalen. Voor alle landen, maar in het bijzonder ontwikkelingslanden die extra inkomsten nodig hebben voor het realiseren van de genoemde faciliteiten, is het zorgelijk dat bedrijven op grote schaal belasting ontwijken.

Geschat wordt dat ontwikkelingslanden jaarlijks ongeveer US\$ 104 miljard aan inkomsten mislopen door belastingontwijking van multinationale ondernemingen.⁷ Daarbij wordt op mondiale schaal jaarlijks ongeveer US\$ 156 miljard per jaar aan belasting ontweken door privé-personen die hun vermogen in belastingparadijzen wegzetten.⁸ Dit gebeurt niet alleen in ontwikkelingslanden. Belastingontwijking vindt ook plaats in landen die lid zijn van de OESO.

Belastingontwijking is een probleem voor iedereen en levert relatief weinig voordelen op. Dit geldt voor zowel rijke als arme landen en voor zowel burgers als het midden- en kleinbedrijf. Dit praktijkonderzoek stelt dat bedrijven en individuen belasting zouden moeten betalen in de landen waar hun economische activiteiten plaats vinden. Belasting moet gebaseerd zijn op de aard en omvang van de economische activiteiten (de *substantie*) in elke jurisdictie waarin ze actief zijn, in overeenstemming met de geldende fiscale wetgeving in deze jurisdicties. Welgestelde individuen zouden ook een redelijk percentage belasting moeten betalen.

In dit praktijkonderzoek wordt belastingontwijking gedefinieerd als volgt: alle praktijken van individuen en organisaties die bedoeld zijn om de betaling van belastingen te vermijden, waarbij:

- fiscale wetgeving niet formeel wordt overtreden, wat belastingontwijking onderscheidt van belastingontduiking waarbij sprake is van illegale praktijken;
- de intenties van de fiscale wetten worden geschonden, dat wil zeggen dat de mazen in de belastingwetgeving worden gebruikt om belastingvoordelen te behalen die de overheid nooit bedoeld heeft;
- transacties niet logisch volgen uit de economische "substantie" (activa, werknemers, omzet, enz.) van het bedrijf, maar zijn opgericht met het doel om belasting te verminderen.

Terwijl belastingontwijking ook plaats vindt binnen de grenzen van een jurisdictie, richt dit onderzoek zich op internationale belastingontwijking waarbij men gericht is op het uitbuiten van verschillen in fiscale regels en belastingtarieven en het feit dat er weinig fiscale gegevens worden uitgewisseld op internationaal niveau.

Internationale transacties tussen bedrijven die zijn gevestigd in verschillende rechtsgebieden maar wel behoren tot dezelfde bedrijfsgroep, bieden veel mogelijkheden voor belastingontwijking. Multinationale ondernemingen kunnen hun financiële stromen (betalingen voor goederen en diensten, winstuitkeringen, rente, etc.) reorganiseren en buitenlandse dochterondernemingen opzetten die geen echte economische activiteiten ontplooiën, met als enig doel het gebruik maken van de verschillen in belastingtarieven en regelgeving tussen de jurisdicties. Met dergelijke transacties worden fiscale wetten officieel niet overtreden. Toch worden de fiscale regelgeving en belastingtarieven in de ene jurisdictie ondermijnd door gebruik te maken van een gunstiger fiscale regelgeving in een andere jurisdictie.

In veel internationale belastingontwikingsstructuren spelen belastingparadijzen een prominente rol. Belastingparadijzen zijn jurisdicties met een wetgevende omgeving die kansen biedt aan particulieren en/of bedrijven die elders zijn gevestigd de verschuldigde belastingen in andere jurisdicties te ontduiken of te vermijden. *Klassieke belastingparadijzen* kennen over het algemeen bijzonder lage tarieven voor inkomstenbelasting en geen voorheffingen, en ze hebben geen strenge eisen met betrekking tot het openbaar maken van gegevens van bedrijven en de uitwisseling van fiscale gegevens met andere jurisdicties is beperkt. Hoewel in *landen met belastingovereenkomsten*, die doorgaans belastingverdragen hebben gesloten met veel landen, het niveau van inkomstenbelasting meestal normaal is en er ook meer transparantie is dan in klassieke belastingparadijzen, kennen ze ook zeer lage voorheffingen, waardoor er weinig obstakels zijn voor financiële stromen door het land.

Nederlandse bankgroepen en internationale belastingontwijking

In dit praktijkonderzoek onderzochten we of er aanwijzingen zijn dat tien Nederlandse bankgroepen betrokken zijn bij internationale belastingontwijking. Er zijn drie manieren waarop een bankgroep betrokken kan zijn bij internationale belastingontwijking:

- **Belastingen die de bankgroep zelf betaalt:** een bankgroep kan stromen van kosten en opbrengsten verschuiven tussen haar dochterondernemingen in verschillende jurisdicties op een manier die niet aansluit bij de economische realiteit van elke dochteronderneming, maar die uitsluitend is gericht op het beperken van de totale belastingbetalingen van de bankgroep.
- **Dienstverlening aan zakelijke klanten:** een bankgroep kan - individueel of samen met andere dienstverleners - zakelijke klanten diensten bieden die hen in staat stellen om hun stromen van inkomsten te verschuiven tussen verschillende jurisdicties op een manier die niet aansluit bij de economische realiteit van elke entiteit, maar die uitsluitend tot doel heeft de totale belastingafdracht van de klant te minimaliseren.
- **Dienstverlening aan particuliere klanten:** een bankgroep kan belastingontwijking of -ontduiking door rijke individuen faciliteren door bijvoorbeeld bankrekeningnummers aan te bieden of diensten met betrekking tot vermogensbeheer in jurisdicties die geen informatie over financiële activa verstrekken aan (een aantal) buitenlandse belastingautoriteiten.

In het praktijkonderzoek hebben we onderzocht of er aanwijzingen zijn dat Nederlandse bankgroepen betrokken zijn bij een van de drie gevallen van internationale belastingontwijking. De Nederlandse bankgroepen die zijn onderzocht waren:

- ABN Amro Bank
- Aegon, als het moederbedrijf van Aegon Bank en Knab
- ASN Bank⁹
- Delta Lloyd, als het moederbedrijf van Delta Lloyd Bank
- ING Groep, als het moederbedrijf van ING Bank
- NIBC
- Rabobank Groep, als het moederbedrijf van Rabobank en Friesland Bank
- SNS Reaal, als het moederbedrijf van SNS Bank en Regio Bank
- Triodos Bank
- Van Lanschot

Het onderzoek naar aanwijzingen voor belastingontwijking is benaderd vanuit twee invalshoeken, zoals hieronder beschreven.

Dochterondernemingen en fondsen in belastingparadijzen

Allereerst hebben we van elke bankgroep onderzocht of deze één of meer dochterondernemingen dan wel investeringsfondsen had opgezet in klassieke belastingparadijzen en/of in jurisdicties met belastingovereenkomsten (kortweg: belastingparadijzen). Om jurisdicties als belastingparadijs aan te kunnen duiden hebben we gebruik gemaakt van de aanbevelingen van OCRA Worldwide - een mondiale marktleider op het gebied van het oprichten en managen van bedrijven in belastingparadijzen - en van de lijst die is aangeleverd door het Tax Justice Network, die belastingparadijzen en offshore finance centres identificeert.

Voor zover mogelijk zijn we de handelsregisters van deze belastingparadijzen nagegaan om aldus de dochterondernemingen van de bankgroepen die in deze jurisdicties geregistreerd staan, te achterhalen. Daarnaast hebben we ons onderzoek gebaseerd op de meest recente lijst van dochterondernemingen die de bankgroepen zelf bij de Nederlandse Kamer van Koophandel hebben gedeponeerd.

Voor zover mogelijk zijn de dochterondernemingen die niet meer bestaan eruit gefilterd. Dit was echter niet altijd mogelijk op basis van de informatie die voorhanden was. Ook zijn dochterondernemingen die door andere bedrijven zijn overgenomen (bijvoorbeeld met betrekking tot het uiteenvallen van ABN Amro Bank na 2007) eruit gefilterd.

Ondanks inspanningen om de lijst in te korten, hebben we 314 dochterondernemingen van 9 Nederlandse bankgroepen in 17 belastingparadijzen geïdentificeerd. De resultaten hebben we aan alle banken laten zien. Dit leidde tot een kortere lijst, 166 dochterondernemingen van 8 Nederlandse bankgroepen in 13 belastingparadijzen, bijvoorbeeld doordat de bankgroep aangaf dat bepaalde dochterondernemingen al ontbonden waren, danwel in het proces van faillissement zaten of daar binnenkort in zouden komen.

Wat betreft de rest van de dochterondernemingen is beoordeeld of ze betrokken zouden kunnen zijn bij vormen van internationale belastingontwijking door de bankgroep zelf, of door diens zakelijke of particuliere klanten. Deze beoordeling heeft eerder vragen opgeworpen, dan dat er conclusies uit getrokken konden worden. Dit laatste is evident onmogelijk omdat de banken zeer beperkte informatie hebben geleverd.

De vragen werden neergelegd bij de bankgroepen. Deze antwoordden vervolgens door extra informatie te sturen en toelichting te geven. Dit heeft er toe geleid dat sommige vragen afdoende zijn beantwoord en zijn komen te vervallen. Andere vragen, echter, zijn niet afdoende beantwoord en de informatie die de banken geleverd hebben leidde juist tot meer vragen. In de "Conclusies" is samengevat welke vragen nog open staan.

Special purpose vehicles voor internationale leningen en uitgiftes

Bij de tweede stap in het onderzoek hebben we onderzocht of banken in de afgelopen drie jaar een leidende positie hebben ingenomen met betrekking tot internationale leningen en/of uitgifte syndicaten die werken met "special purpose vehicles" in een "offshore jurisdiction". Dit zijn dochterondernemingen in belastingparadijzen, die door bedrijven zijn opgezet met het oog op het verkrijgen van een internationale banklening of om obligaties uit te geven op de internationale kapitaalmarkt.

Het “special purpose vehicle” vertegenwoordigt geen economische substantie (er zijn geen werknemers of andere activiteiten), maar sluit formeel wel de lening af (of geeft de obligaties uit). Het geld dat aangetrokken is kan weer doorgeleend worden aan het moederbedrijf of aan een andere dochteronderneming die financiering nodig heeft. Het “special purpose vehicle” kan de fondsen ook investeren in activa (bijvoorbeeld aandelen van andere bedrijven, schepen) die gemakkelijk beheerd kunnen worden door een andere dochteronderneming in een ander land, die wel substantie heeft.

In het algemeen is de wens om minder belasting op inkomsten en/of voorheffingen te betalen een belangrijke reden om een “special purpose vehicle” als tussenpersoon in het leven te roepen. Voor elke bank hebben we onderzocht of er recente voorbeelden zijn over haar deelname in syndicaten die leningen hebben verstrekt aan “special purpose vehicles”, of die de “special purpose vehicles” geholpen hebben met het uitgeven van obligaties. Bij deze voorbeelden hebben we geanalyseerd wat voor belastingvoordelen een dergelijke constructie het moederbedrijf, de eigenlijke klant van de bank, kan opleveren.

Het bleek dat ABN Amro, ING, NIBC en Rabobank gedurende de afgelopen drie jaar betrokken zijn geweest bij leningen en/of uitgaves van obligaties van één of meer “special purpose vehicles”. Geen van deze “special purpose vehicles” leek enige substantie te hebben en ze waren allemaal opgericht in belastingparadijzen. Aan de betrokken banken is gevraagd of ze opheldering konden geven over de stappen die ze hebben ondernomen om de mogelijkheid van internationale belastingontwijking door deze “special purpose vehicles” uit te sluiten. Hoewel de banken uitleg gaven en nadere informatie verstrekten, bleven er vragen bestaan over de meeste van deze financiële deals. In de “Conclusies” is opgesomd voor welke banken er nog vragen openstaan.

Conclusies

In dit praktijkonderzoek is onderzocht of er aanwijzingen zijn dat Nederlandse bankgroepen betrokken zijn bij internationale belastingontwijking. Omdat de meeste banken tekortschieten in het verstrekken van informatie over hun exacte activiteiten, activa, werknemers, kosten, winsten, betaalde belastingen en klanten van de dochterondernemingen en fondsen van de banken in belastingparadijzen, en ook de informatie over de “special purpose vehicles” waar sommige banken diensten aan verleend hebben tekortschiet, kunnen er geen definitieve conclusies getrokken worden.

Dit rapport geeft een beeld van de tussenresultaten van een proces van vragen stellen aan de banken en het analyseren van de antwoorden. De conclusie die op dit moment uit het rapport getrokken mag worden is, dat het goed zou zijn als de volgende bankgroepen verder opheldering zouden verschaffen over de manier waarop zij elke betrokkenheid bij één van de drie soorten van belastingontwijking uitsluiten.

- **Vragen over de belastingen die de bank zelf betaalt:**
 - Aegon: herverzekeringsactiviteiten in Bermuda;
 - Delta Lloyd: investeringsfondsen in Ierland;
 - Rabobank: financieringsactiviteiten op Curacao.
- **Vragen over dienstverlening aan zakelijke klanten:**
 - ABN Amro: joint-ventures met scheepvaart bedrijven in belastingparadijzen; leningen aan “special purpose vehicles” in belastingparadijzen; leningen aan bedrijven die (mogelijk) betrokken zijn bij belastingontwijking;
 - ING: leningen aan “special purpose vehicles” in belastingparadijzen; leningen aan bedrijven die (mogelijk) betrokken zijn bij belastingontwijking;
 - NIBC: lening aan een “special purpose vehicle” op de Kaaimaneilanden;

- Rabobank: joint-ventures in Delaware en dochterondernemingen in de Kaaimaneilanden, Luxemburg en Mauritius; lening aan een “special purpose vehicle” op de Kaaimaneilanden; leningen aan een bedrijf dat mogelijk betrokken is bij belastingontwijking.
- **Vragen over dienstverlening aan particuliere klanten:**
 - ABN Amro: private banking in Jersey, Guernsey en Luxemburg;
 - Aegon: investeringsfondsen op de Kaaimaneilanden;
 - Delta Lloyd: investeringsfondsen in Luxemburg;
 - ING: investeringsfondsen op de Kaaimaneilanden en in Luxemburg
 - Van Lanschot: private banking in Zwitserland en investeringsfondsen in Luxemburg.

Aanbevelingen door de Eerlijke Bankwijzer

Hoewel alle Nederlandse bankgroepen beweren dat ze niet betrokken zijn bij internationale belastingontwijking, blijkt uit dit rapport dat hun internationale investeringen en dienstverlening vele vragen oproept, die niet in alle gevallen afdoende beantwoord zijn. Volgens de Eerlijke Bankwijzer zouden banken transparanter moeten zijn over dit gevoelige onderwerp, en zouden ze verantwoordelijkheid moeten nemen wanneer ze beslissingen nemen die kunnen leiden tot internationale belastingontwijking. Banken dienen zich ook volledig te houden aan de huidige OESO Richtlijn voor Multinationale Ondernemingen over belastingen, waarin staat: “Goed burgerschap voor ondernemingen betekent op het gebied van belastingen dat ondernemingen zich houden aan de letter en de geest van de fiscale wet- en regelgeving in alle landen waarin zij werken, met de autoriteiten samenwerken en deze relevante of juridisch verplichte informatie verschaffen”¹⁰, alsmede aan maatregelen die volgen uit het lopende OESO initiatief tegen het eroderen van belastinggrondslag en het verschuiven van winsten (BEPS).¹¹

Daarom doet de Eerlijke Bankwijzer de volgende aanbevelingen aan de Nederlandse bankgroepen:

1. Voldoe aan duidelijke country-by-country reporting

Niet alle Nederlandse banken die in meer dan één land actief zijn hebben al een overzicht van hun medewerkers en omzet per land in 2013 gepubliceerd, hoewel dit overzicht op 1 juli 2014 gepubliceerd had moeten zijn volgens de conceptversie van het “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten” dat door het Ministerie van Financiën is uitgevaardigd. Van de banken met activiteiten in het buitenland hebben ABN Amro, Delta Lloyd, ING, NIBC, Triodos en Van Lanschot de vereiste informatie gepubliceerd, terwijl Rabobank dat niet heeft gedaan. Deze Nederlandse regelgeving treedt naar verwachting de komende maanden in werking. Daarmee wordt het verplicht om meer gedetailleerde gegevens per te publiceren, inclusief gegevens over winsten en belastingen. Deze rapportages zullen tegelijk met de jaarverslagen van de banken gepubliceerd moeten worden, te beginnen met het jaarverslag over het financiële jaar 2014. De Eerlijke Bankwijzer is een groot voorstander van deze wetgeving en roept de banken op om op tijd te rapporteren, in lijn met de geest van de wetgeving. Dit betekent bijvoorbeeld dat banken ook moeten rapporteren over landen waar ze slechts minderheidsaandelen hebben in één of meer joint-ventures of vennoten.

2. Publiceer een complete lijst van dochterondernemingen van de bankgroep

De meeste bankgroepen publiceren in hun jaarverslag of op hun website geen lijst met alle dochterondernemingen. Zoals de wet vereist, hebben zij deze lijsten alleen bij de Nederlandse Kamer van Koophandel gedeponneerd. Het is niet eenvoudig om ze daar uit te halen. Daarbij zijn de lijsten die gedeponneerd zijn vaak verouderd.

De Eerlijke Bankwijzer beveelt alle Nederlandse bankgroepen daarom aan om een volledige lijst van al hun dochterondernemingen, branches, joint-ventures en vennoten - en de fondsstructuren die door hen beheerd worden - te publiceren in hun jaarverslagen en op hun websites, en om deze regelmatig te updaten. De lijst zou tenminste moeten aangeven in welke landen de entiteiten zitten, voor welke percentages de banken eigenaar zijn ofwel controle uitoefenen, en welke activiteiten de entiteit ontplooit.

3. Let beter op de belastingen die particuliere klanten betalen

Verschillende bankgroepen leveren bankdiensten of investment management diensten vanuit belastingparadijzen of ze gebruiken fondsstructuren die in belastingparadijzen zijn opgezet. In het algemeen gaat dit gepaard met een risico op belastingontwijking of -ontduiking door particuliere klanten. Hoe groot dit risico is en op welke investeerders uit welke landen dit van toepassing is, verschilt per belastingparadijs. Daarom is het belangrijk dat banken transparant worden over de grootte van investeringen die door deze entiteiten voor verschillende soorten van investeerders beheerd worden - uitgesplitst naar het land waar de investeerders wonen. Het zou goed zijn als banken ook zouden toelichten hoe zij er voor zorgen dat de *ultimate beneficial owners* van bankrekeningen en investeringen hierover rapporteren aan de belastingdiensten in de landen waar ze wonen.

4. Maak het belastingbeleid ambitieuzer

De meeste bankgroepen schrijven in hun beleidsstukken dat ze niet zullen deelnemen in transacties als deze zijn gericht op internationale belastingontwijking. Hoewel dit een goede eerste stap is, is de Eerlijke Bankwijzer van mening dat dit niet ambitieus genoeg is. Banken zouden er duidelijk over moeten zijn dat ze geen financiële diensten willen verlenen aan “special purpose vehicles” die opgericht zijn ten behoeve van belastingontwijking door hun klanten. De cruciale vraag is niet of de bank een actieve rol speelt in de structuur van belastingontwijking, maar of de klant volgens de belastingmores van de bank opereert. Als dit niet het geval is, zou de bank met de klant moeten overleggen over een structuur van dienstverlening die meer in lijn is met de geest van de belastingwetten of - als de klant een dergelijke dialoog niet aan wil gaan - zou de bank haar diensten moeten staken.

5. Verscherp de belastingmores met betrekking tot dubbele belasting

Wanneer banken geconfronteerd worden met vragen over hun dochterondernemingen en fonds structuren in belastingparadijzen, en over hun diensten aan special purpose vehicles, dan antwoorden ze vaak dat deze “alleen maar bedoeld zijn om dubbele belasting te voorkomen”. Dit antwoord rechtvaardigt hun manier van handelen echter niet. Elke (democratische) staat heeft het soevereine recht om zijn eigen belastingwetten en -tarieven te bepalen. En elke staat mag zelf weten met welke andere jurisdicties hij belastingverdragen sluit waarin uitzonderingen op deze regelgeving en tarieven worden geregeld.

Wanneer een bank of een bedrijf vanuit een bepaalde jurisdictie opereert dan moet deze de regelgeving, belastingtarieven en belastingverdragen die daar heersen respecteren. Dit kan betekenen dat bepaalde internationale transacties dubbel belast zouden worden. Hoewel dit ervoor kan zorgen dat bepaalde transacties achterwege zouden blijven - en dat er dus sprake is van zakelijk verlies voor het bedrijf of voor de bank - is het niet gerechtvaardigd om een brievenbusfirma op te zetten of een fondsstructuur zonder substantie in een belastingparadijs, enkel en alleen om de “dubbele belasting te ontwijken”. Een dergelijke structuur kan ertoe leiden dat bedrijven of banken belastingvoordelen krijgen die niet voor hen bedoeld zijn, of dat, soms onwillekeurig, crediteuren of investeerders in de belastingparadijzen twee keer niet belast worden (double non-taxation). Banken en bedrijven zouden het belastingsysteem van het land waar zij opereren of waar ze willen opereren moeten accepteren en respecteren naar de letter en de geest.

De Eerlijke Bankwijzer adviseert de bankgroepen om aan hun werknemers en hun klanten duidelijk te maken dat het ontwijken van dubbele belasting een principieel verkeerd argument is om kunstmatige structuren te rechtvaardigen en dat het het recht van regeringen om een belastingstelsel voor hun land te bewerkstelligen, ondermijnt.

6. Verbeter onderzoek naar mogelijke internationale belastingontwijking

Belastingbeleid zou geïmplementeerd moeten worden door middel van rigoureuze due diligence praktijken. Wanneer men geconfronteerd wordt met een “special purpose vehicle” die door een klant is opgericht, of met een dochteronderneming of een fonds dat door een ander onderdeel van de bankgroep -in een belastingparadijs- is opgericht, dan is diepgaander onderzoek naar de logica achter deze keuze nodig. Anders dan de bankgroepen hebben gezegd in het kader van dit praktijkonderzoek, moet het uitgangspunt niet alleen zijn dat de structuur legitiem is voor wat betreft belastingen. Het uitgangspunt zou moeten zijn dat het oprichten van een bedrijf zonder inhoud of fondsstructuren in belastingparadijzen niet wenselijk is, tenzij er duidelijke en legitieme argumenten zijn om het toch te doen en de mogelijkheid dat de structuur gebruikt wordt voor belastingontwijking uitgesloten is.

Als aanvulling op deze aanbevelingen aan de banken zelf, raadt de Eerlijke Bankwijzer de Nederlandse regering aan om:

1. De vragen die in dit rapport zijn opgeworpen verder te onderzoeken

Uit dit onderzoek konden nog geen eindconclusies getrokken worden over de vraag of één of meer Nederlandse bankgroepen betrokken zijn in vormen van internationale belastingontwijking, omdat cruciale gegevens ontbreken. Dit rapport roept, met betrekking tot de meeste bankgroepen, echter een aantal belangrijke vragen op die nog niet afdoende zijn beantwoord en waardoor betrokkenheid van Nederlandse banken bij belastingontwijking niet uitgesloten kan worden. De Nederlandse regering en de belastingdienst zouden deze vragen kunnen opvolgen en de Nederlandse bankgroepen vragen om serieuze antwoorden te geven op deze vragen.

2. De samenwerking met andere jurisdicties te verbeteren

In juli 2013 is er een Action Plan over *Base Erosion and Profit Shifting (BEPS)* gepresenteerd door de OESO. Het Action Plan bestaat uit vijftien actiepunten die verder onderzocht zouden worden in de volgende 18 tot 24 maanden.¹² Dit is een eerste goede stap naar het bewerkstelligen van een beter internationaal belastingstelsel, maar het is niet genoeg. Belangrijke EU lidstaten, waaronder Nederland, en andere OESO landen moeten beter samenwerken om belastingontwijking en ontduikingspraktijken uit te bannen. Dit onderzoek laat zien dat Nederlandse banken mogelijk gelinkt kunnen worden aan belastingontwijking vanwege verschillen in belastingwetgeving wereldwijd. De Nederlandse regering en de Nederlandse belastingdienst zouden niet slechts moeten focussen op mogelijke implicaties voor de Nederlandse belastingen, maar ze zouden ook een multilateraal systeem voor het automatische uitwisselen van gegevens over particuliere financiële middelen, dat ook goed werkt voor ontwikkelingslanden, moeten steunen.

3. Country-by-country rapportage door banken te stimuleren

Het uiteindelijke “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten” zou door het Ministerie van Financiën zo snel mogelijk uitgevaardigd moeten worden om volledige country-by-country rapportage mogelijk te maken wanneer de jaarverslagen over 2014 gepubliceerd worden. Banken zouden aangemoedigd moeten worden om te rapporteren in lijn met de geest van de wetgeving. Dit betekent bijvoorbeeld dat banken ook over landen moeten rapporteren waar ze slechts een minderheidsaandeel hebben in één of meer joint-ventures of vennoten.

4. Publicatie van alle dochterondernemingen en fondsen verplicht te maken

Alle Nederlandse bankgroepen zouden verplicht moeten worden om een volledige lijst van al hun dochterondernemingen, branches, joint-ventures en vennoten - en de fondsstructuren die door hen beheerd worden - te publiceren in hun jaarverslagen en op hun websites, en om deze regelmatig te updaten. De lijst zou tenminste moeten aangeven in welke landen de entiteiten zitten, voor welke percentages de banken eigenaar zijn ofwel controle uitoefenen, en welke activiteiten de entiteit ontplooit.

Introduction

This report provides the results of a case study on the possible involvement in international tax avoidance by the major Dutch banking groups. The aim of this case study, which Profundo is undertaking for the Eerlijke Bankwijzer (Fair Bank Guide), is to find out whether or not any of the major Dutch banking groups are involved in international tax avoidance practices. The premise of this case study is that companies should pay taxes in the countries where their economic activities take place and individuals with large financial wealth should also pay their fair share of taxes.

This report is organised as follows:

- Chapter 1 explains the different mechanisms for international tax avoidance and evasion, the problems created by them, the different forms in which banks can be involved and the various policy initiatives taken at different levels to combat international tax avoidance and evasion.
- Chapter 2 presents the methodology of this case study, discussing the objective and the different research approaches.
- The subsequent chapters discuss the Dutch banking groups, analysing their recent tax payments, their subsidiaries located in tax havens and services they have provided to special purpose vehicles. If relevant this information is complemented by the comments of the banking group. The results are presented in the following order: Chapter 3 discusses ABN AMRO, Chapter 4 discusses Aegon, Chapter 5 discusses ASN Bank, Chapter 6 discusses Delta Lloyd, Chapter 7 discusses ING, Chapter 8 discusses NIBC, Chapter 9 discusses Rabobank, Chapter 10 discusses SNS Reaal, Chapter 11 discusses Triodos and Chapter 12 discusses Van Lanschot.

A summary can be found on the first pages of this report.

Chapter 1 **Background: Banks and international tax avoidance**

1.1 **What is international tax avoidance?**

Tax avoidance can be defined as all practices of individuals and organisations which are intended to avoid the payment of taxes, whereby:

- Tax laws are not formally contravened, discerning tax avoidance from tax evasion which implies the use of illegal practices;
- The intentions of tax laws are violated, i.e. loopholes in tax laws are used to obtain tax advantages that the government never intended;
- Transactions do not follow logically from the economic “substance” (assets, employees, revenues, etc.) of the company but are set up with the purpose to reduce tax liability.¹³

While tax avoidance practices can occur within the boundaries of each jurisdiction, international transactions between companies which are based in different jurisdictions but belong to the same business group offer many options for tax avoidance schemes. International tax avoidance occurs when related companies incorporated in different jurisdictions reorganize their financial flows (revenues and expenses, interest received and paid, dividends, royalties, etc.) and set up foreign subsidiaries which undertake no real economic activities, for the sole purpose of utilizing the differences in tax rates and regulations between the jurisdictions.

With such transactions, it is well possible that no tax laws are violated officially (this is usually difficult to judge). Nevertheless, the tax regulations and tax rates in one jurisdiction are undermined by making use of more favourable tax regulations in another jurisdiction. When the transactions do not follow logically from the economic “substance” (assets, employees, revenues, etc.) of the different companies engaged in the transactions, this can be described as “international tax avoidance” - or as “Base Erosion and Profit Shifting” as it was framed in a recent OECD report.¹⁴

Such forms of international tax avoidance are increasingly seen as unwanted, by international bodies like the G20¹⁵, the European Union¹⁶ and the OECD¹⁷. This is because tax income is crucial for governments to be able to carry out their duties and to provide basic services such as healthcare, safety and education. Everyone who lives, works or carries out business in a country, benefits from the basic services that the government of this country provides.¹⁸ Especially for developing countries, where such government services have a big role to play in improving the health, education and livelihoods of many people, tax income is of crucial importance.

Therefore, the premise of this case study is that companies should pay taxes where their economic activities take place. Taxation should be based on “substance”: the taxation of companies should be based on the nature and scope of the economic activities in each jurisdiction they are active in, in combination with the applicable tax regulations in these jurisdictions.¹⁹ Individuals with large financial wealth should also pay their fair share of taxes.

Different from forms of tax avoidance taking place within the boundaries of one jurisdiction, international tax avoidance is difficult to prevent and address by the government of one specific country. Possible approaches are further hindered by the lack of transparency, as there is currently only a limited exchange of tax information between countries and because most internationally operating companies do not publish clear data on assets, employees, turnover and costs per country in which they operate. This makes it difficult to determine in which jurisdictions companies earn their profits and - thus - where they should pay their taxes.

The lack of transparency makes it difficult to begin to indicate the size of the problem: the value of the taxes avoided, especially by wealthy individuals and companies operating on an international scale.²⁰ The following sections discuss the taxes which companies have to pay (section 1.2), tax havens (section 1.3), forms of international tax avoidance practiced by companies (section 1.4) and forms of international tax avoidance practiced by wealthy individuals (section 1.5).

1.2 Corporate taxes

1.2.1 Corporate income taxes

Corporate income taxes are levied on the taxable profits of companies, by the jurisdictions where companies have their activities. Most countries tax all corporations doing business in the country on income derived from that country. Many countries have systems with progressive tax rate systems under which corporations with lower levels of income pay a lower rate of tax and the tax rate increases for higher corporate incomes.²¹

Table 1 provides an illustrative overview of the corporate income tax rates for the G8 countries and the Netherlands. The corporate income tax rates of these jurisdictions vary from 20% in Russia to 40% in the United States and show a downward trend in most jurisdictions. Note that these are statutory tax rates, some countries also have special regimes that provide for much lower effective tax rates on specific businesses or forms of corporate income.

Table 1 Corporate income tax rates (%) G8 and the Netherlands, 2006-2014

Jurisdiction	2006	2007	2008	2009	2010	2011	2012	2013	2014
Canada	36.1	36.1	33.5	33.0	31.0	28.0	26.0	26.0	26.5
France	33.3	33.3	33.3	33.3	33.3	33.3	33.3	33.3	33.3
Germany	38.3	38.4	29.5	29.4	29.4	29.4	29.5	29.6	29.6
Italy	37.3	37.3	31.4	31.4	31.4	31.4	31.4	31.4	31.4
Japan	40.7	40.7	40.7	40.7	40.7	40.7	38.0	38.0	35.6
Netherlands	29.6	25.5	25.5	25.5	25.5	25.0	25.0	25.0	25.0
Russia	24.0	24.0	24.0	20.0	20.0	20.0	20.0	20.0	20.0
United Kingdom	30.0	30.0	30.0	28.0	28.0	26.0	24.0	23.0	21.0
United States	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0

Source: KPMG, "Corporate tax rates table", KPMG website (www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/corporate-tax-rates-table.aspx), viewed July 2014.

1.2.2 Withholding taxes on dividend, interest and royalties

Withholding taxes are applied in many jurisdictions when one party pays a certain sum of money to another party. In a domestic setting, this payment can be regarded as taxable income for the receiving party. To ascertain that the **receiving party** will pay the (corporate) income tax which is due on the payment he receives, the government may require the **paying party** to withhold or deduct tax from the payment and pay that tax to the government. When applied to domestic payments, withholding taxes are thus (corporate) income taxes paid by one party on behalf of another party. Governments use these withholding taxes as a preventive measure to combat tax avoidance by individuals or companies.

The classic example in most jurisdictions is the withholding tax which employers have to deduct from the gross wages of their employees and pay to the government. This withholding tax in fact is the income tax which the employees have to pay, but it is already paid on their behalf by their employer.

In most jurisdictions, there are additional withholding tax obligations if the **receiving party** is resident in a different jurisdiction than the **paying party**. In those circumstances, withholding taxes can apply to dividends, royalties, capital gains, interest or the sale of real estate. These additional withholding taxes are raised, due to the jurisdiction where the receiving party is located. For these international payments, the withholding taxes are final taxes which cannot be corrected by the income tax which the receiving party has to pay.

Table 2 presents an illustrative overview of the standard international withholding tax rates for the most important categories - dividends, interest and royalties - for the G8 countries and the Netherlands. These rates can be reduced by tax treaties between two jurisdictions. For each jurisdiction, the table shows with how many other jurisdictions it has concluded tax treaties.

Table 2 Standard international withholding tax rates for G8 and Netherlands, 2014

Jurisdiction	Tax treaties	Standard withholding tax rate 2014 (%)		
		<i>Dividends</i>	<i>Interest</i>	<i>Royalties</i>
Canada	92	25	0/25	0/25
France	123	30/75	0/75	33.33/75
Germany	99	25	0	15
Italy	91	1.375/20	12.5/20	30
Japan	62	20	15/20	20
Netherlands	91	0/15	0	0
Russia	87	15	20	20
United Kingdom	124	0	20	20
United States	70	30	30	30

Source: Deloitte, "Withholding Tax Rates 2014", *Deloitte*, March 2014; Department of Finance Canada, "Tax Treaties: In Force", *website Department of Finance Canada* (www.fin.gc.ca/treaties-conventions/in_force--eng.asp), Viewed in July 2014; Dipartimento delle Finanze, "Convenzioni per evitare le doppie imposizioni", *website Dipartimento delle Finanze* (www.finanze.it/export/finanze/Per_conoscere_il_fisco/fiscalita_Comunitaria_Internazionale/convenzioni_e_accordi/convenzioni_stipulate.htm), Viewed in July 2014; Ministry of Finance Japan, "Japan's Tax Convention Network", *website Ministry of Finance Japan* (www.mof.go.jp/english/tax_policy/tax_conventions/international_182.htm), Viewed in July 2014; Lowtax, "Russia: Double Tax Treaties", *website Lowtax* (www.lowtax.net/information/russia/russia-table-of-treaty-rates.html), Viewed in July 2014.

1.2.3 International tax treaties

In bilateral tax treaties, two jurisdictions make all kind of specific agreements relating to the fiscal implications of economic transactions between the jurisdictions, for instance on where certain income can be taxed, how a place of domicile is defined, on the exchange of fiscal information and on how to exclude tax avoidance. An important element of most tax treaties also is that they commonly prescribe reduced international withholding tax rates for dividend, interest and royalty flows between the jurisdictions. Worldwide, more than 2,500 bilateral tax treaties exist. The main reason that tax treaties are concluded between jurisdictions is that when companies engage in business activities in more than one jurisdiction, the potential risk of double taxation arises.

When a company receives interest or dividends from another company abroad, the paying company has to deduct a withholding tax to be paid to its own government. But the government in the jurisdiction of the receiving company will treat the received interest or dividend as corporate income and therefore levy a corporate income tax from the receiving company. In this situation, the amount of interest or dividend received could be taxed double, by two different governments.

Tax treaties aim to avoid such forms of double taxation, based on the principle that every income stream should only be taxed once. Tax treaties therefore deal with the allocation of taxing rights between the two jurisdictions and with the rates of withholding taxes on international transactions between individuals and companies in the two jurisdictions. By doing so, tax treaties aim to eliminate potential barriers to foreign investment and reduce the incentive for tax evasion.²²

For transactions between companies in different member states of the European Union (EU), a number of EU Directives, especially the Parent-Subsidiary Directive (PSD) and the Interest and Royalties Directive (IRD), serve the same purpose. The PSD aims to eliminate double taxation of profits distributed by a subsidiary in one member state to a parent company in another member state. The member state where the subsidiary is located may not impose withholding tax on dividends made to the parent company. However, the PSD only applies when companies fulfil certain criteria, including that the company is subject to corporate income tax in an EU member state, and that the subsidiary has been owned by the parent company for a specified period.

The IRD provides a withholding tax exemption for cross-border interest and royalty payments made between EU-based group companies. Again, certain restrictions apply.²³

1.3 Tax havens

In many international tax avoidance structures tax havens play a prominent role. Tax havens are jurisdictions which have a legislative environment which provides opportunities to individuals and/or companies domiciled elsewhere to evade or avoid taxes due in other jurisdictions. Tax havens are often characterized by a remarkably large financial sector, low tax rates and only very limited transparency requirements for companies. Two types of jurisdictions with attractive tax climates, which can play a role in reducing tax payments by foreign companies, can be distinguished.²⁴

- *Classic tax havens*, like the Cayman Islands, British Virgin Islands and Bermuda, which have zero or very low corporate income taxes and withholding taxes. These jurisdictions generally have no, or very few, tax treaties in place. The transparency of these jurisdictions is generally low.
- *Tax treaty jurisdictions*, like The Netherlands, Singapore, Malta, Mauritius and Cyprus. These jurisdictions generally have normal tax rates for domestic activities, but combine these with low withholding taxes for foreign payments and a large number of tax treaties. The transparency of these jurisdictions is generally higher compared to the classic tax havens. For example, in the case of Cyprus, information on directors and shareholders is publicly available.²⁵

Both types of jurisdictions have distinctive advantages and disadvantages. From the perspective of foreign companies looking for ways to reduce their tax payments, the strong points of the *classic tax havens* are their very low tax rates and their lack of transparency requirements for companies. The latter make it easier to hide tax evasion and avoidance structures for foreign tax authorities.

But their lack of tax treaties is a disadvantage of the *classic tax havens*. This favours the *tax treaty jurisdictions* which have a large number of tax treaties in place and - therefore - can offer tax rates which are favourable for international transactions. However, transparency requirements are usually higher in these jurisdictions.

Classic tax havens usually have zero or very low corporate income taxes and withholding taxes. These jurisdictions generally have no, or very few, tax treaties in place. The transparency requirements for companies in these jurisdictions are generally low. *Classic tax havens* are also called *offshore jurisdictions*, as they often permit an “offshore” treatment of companies. This means that a company is legally organized in the tax haven, but may not conduct material business within its jurisdiction. They are often not taxed by the tax haven for their “offshore” business activities.

Certain jurisdictions also provide favourable tax treatment to companies that are organized as “onshore” companies.

Table 3 presents an overview of corporate income tax rates and standard withholding tax rates for a range of *classic tax havens*. The rates of withholding taxes can be reduced by tax treaties between two jurisdictions. For each jurisdiction, the table shows with how many other jurisdictions it has concluded tax treaties.

Furthermore, Table 3 shows the population figures of these classic tax havens. These figures are added to illustrate that most of the tax havens have a very low population figure, which contributes to the suspicion that subsidiaries of foreign companies based in these jurisdictions probably are not established there to provide services to the large domestic markets in these jurisdictions.

Table 3 Population figures, tax rates and tax treaties of classic tax havens, 2014

Jurisdiction	Population 2013	Corporate income tax rate	Tax treaties	Standard withholding tax rate 2014 (%)		
				<i>Dividends</i>	<i>Interest</i>	<i>Royalties</i>
Bahamas	377,374	0.0	0	0	0	0
Bermuda	65,024	0.0	0	0	0	0
British Virgin Islands	31,912	0.0	0	0	0	0
Cayman Islands	58,435	0.0	0	0	0	0
Curacao	153,500	27.5	4	0	35	0
Delaware (U.S.)	917,092	40.0	70	30	30	30
Gibraltar	29,111	10.0	0	0	0	0
Guernsey	65,605	0.0	2	0	0	0
Isle of Man	85,888	0.0	3	0	0	0
Ireland	4,595,281	12.5	68	0/20	20	20
Jersey	95,732	0.0	3	0	0	0/20
Liberia	4,294,077	25	4	15	15	15
Liechtenstein	36,925	12.5	1	0	0	0
Luxembourg	543,202	29.2	70	0/15	0	0
Macau	566,375	12.0	4	0	0	0
Marshall Islands	52,634	?	0	0	0	0

Jurisdiction	Population 2013	Corporate income tax rate	Tax treaties	Standard withholding tax rate 2014 (%)		
Mauritius	1,296,303	15.0	41	0	15	0/15
Seychelles	89,173	1.5	15	0/15	0/15	0/15
Switzerland	7,996,026	17.9	80+	35	0/35	0

Sources: KPMG, "Corporate tax rates table ", *KPMG website* (www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/corporate-tax-rates-table.aspx), viewed July 2014; Deloitte, "Withholding Tax Rates 2014", *Deloitte*, 2014; The World Bank, "Population (Total)", *Website World Bank* (<http://data.worldbank.org/indicator/SP.POP.TOTL>), Viewed in July 2014; Index Mundi, "Profiles 2013", *Website Index Mundi* (www.indexmundi.com), Viewed in May 2014; World Population Statistics, "Delaware Population 2013", *Website World Population statistics* (www.worldpopulationstatistics.com/delaware-population-2013/), Viewed in May 2014.

Apart from their low tax rates, the classic tax havens are also attractive for tax avoidance structures because they have only limited transparency requirements for companies. In principle, all jurisdictions require companies to deposit some filings at the national, regional or local company register. This may include the Memorandum of Association, which includes information like the amount of registered capital, the address and the description and form of the company. In many cases, companies also need to file financial accounts and information about who their directors and shareholders are. However, the details and verification required, as well as the extent to which this information is made available to the public by the company register, differ amongst the different jurisdictions.

In a classic tax havens, almost none of this information is made available to the public by the company register. Tax treaty jurisdictions generally make more information available to the public. Table 4 presents examples of the information which is made public in some *classic tax havens* and in some *tax treaty jurisdictions*.

Table 4 Corporate disclosure requirements in tax havens

Jurisdiction	Directors	Shareholders	Financial accounts
Bahamas	Yes	No	No
Bermuda	No	Yes	No
British Virgin Islands	No	No	No
Cayman Islands	No	No	No
Cyprus	Yes	Yes	No
Curacao	-	No	No
Delaware (U.S.)	Yes*	Varies**	No
Gibraltar	Yes	Yes	No
Guernsey	-	No	No
Isle of Man	Yes	No	No
Ireland	-	Yes	Yes
Jersey	No	Yes	No
Liberia	-	No	No
Liechtenstein	-	No	No
Luxembourg	Yes	No	Yes
Macau	-	No	No
Marshall Islands	-	No	No
Mauritius	No	No	No

Jurisdiction	Directors	Shareholders	Financial accounts
Seychelles	No	No	No
Switzerland	-	No	No

Source: OCRA, "Jurisdiction Centre", *Website OCRA (www.ocra.com/jurisdictions/index.asp)*, Viewed July 2014; Tax Justice Network, "Report on Guernsey", "Report on Liechtenstein", "Narrative Report on Curacao", "Report on Liberia", "Narrative Report on Ireland", "Report on Macao", "Report on Marshall Islands", *Tax Justice Network*, 7 November 2013.

*on formation, **varies by state

1.4 Forms of international tax avoidance by companies

Companies that trade internationally or invest outside their home country often look for ways to structure their operations in such a way that they minimize their overall tax payments to the governments of the jurisdictions in which they are active. To do so, they often set up "shell companies" in jurisdictions with attractive tax climates. Shell companies are generally defined as companies that are not directly engaged in material business activities and thus have no substance. Shell companies are legal entities that serve, among other things:

- to organize ownership (both "upstream", with respect to consolidating investors, and "downstream", with respect to acting as holding companies),
- to act as nominal trading companies between the producers and purchasers of products, even though the actual products will never physically pass through such companies;
- to act as financing companies for the borrowing and lending both amongst members of the corporate family and with respect to specific bank, private, or public debt;
- as reservoirs for the legal ownership and isolation from the corporate group of intellectual property or other special assets of the corporate group;
- as entities that permit a favourable accounting treatment for activities of the corporate group, also with respect to taxation.

Shell companies often have the effect of - and may provide the means for - obscuring lines of ownership or transactional activity. Many shell companies have as a main objective the passing through of funds from one country to another, often in order to minimise the overall (consolidated) tax payments of the parent company.

Three main types of shell companies can be discerned, which link to three different forms of international tax avoidance. These types of shell companies and the associated forms of international tax avoidance will be discussed in the following sections.

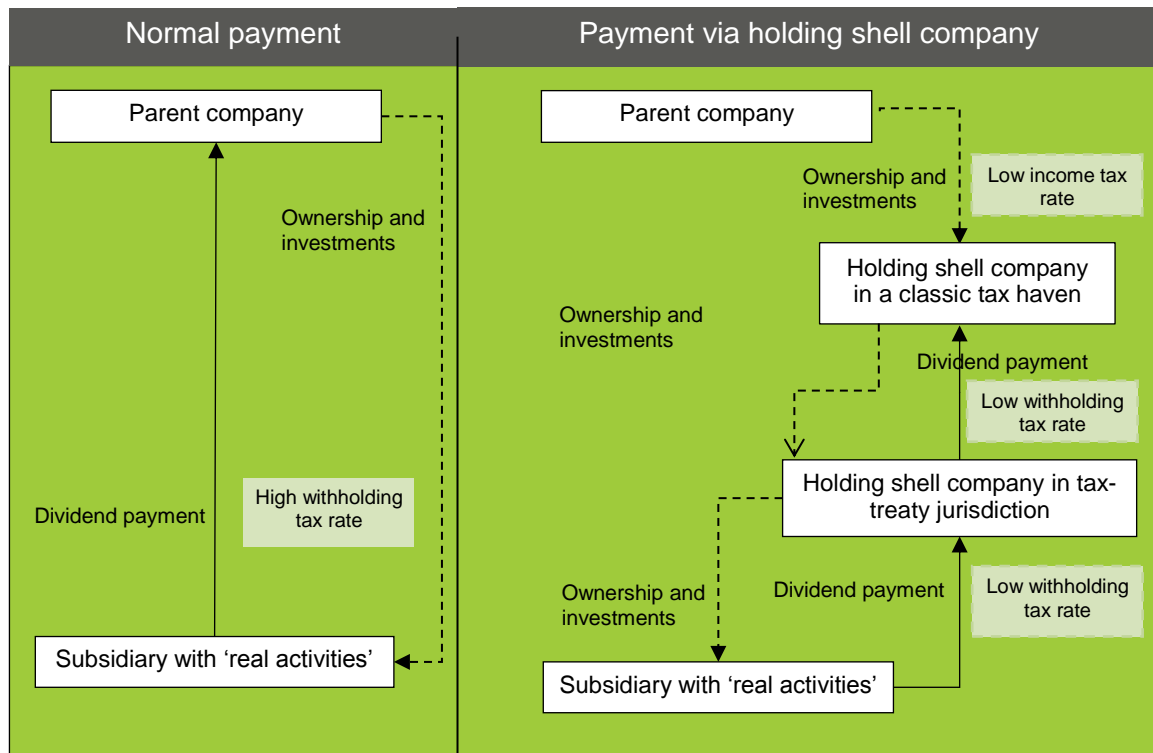
1.4.1 Holding shell companies

A holding company is a company which owns the shares of one or more other companies but which conducts no material operating business of its own. Holding companies can be set up for tax and non-tax reasons. A holding company may be an efficient way to manage a group of subsidiaries in a particular region, by centralizing financing, licensing and management activities.

A holding company may also provide tax benefits, such as reduced withholding taxes on dividends and capital gains. Some countries, such as the Netherlands and other tax treaty jurisdictions, have established favourable regimes for holding companies in the first place to attract investments in production and distribution companies in their own country. But when these jurisdictions are used in tax avoidance structures, there is no strong link between the location of the holding company and the location of the corporate activities. For tax reasons the holding company often is set up in a different jurisdiction than the jurisdictions in which the actual investments take place.

In this case the holding company is a holding *shell* company: a company which is only set up to channel payments, often for tax reasons. The purpose of this holding shell company is to reduce withholding taxes on dividend payments or taxes on capital gains when a subsidiary is sold. Ultimately, the intention is to reduce the consolidated tax payments of the corporate group (parent company and all subsidiaries) as a whole. Figure 1 demonstrates the role of holding shell companies in such tax avoidance structures.

Figure 1 Tax avoidance through holding shell companies



As shown in Figure 1, holding shell companies can be based in *tax treaty jurisdictions* with low withholding tax rates on dividends and capital gains and with an extensive tax treaty network, as well as in a classic tax havens with low corporate income taxes. By combining the two types of holding companies, corporate groups can organize their ownership structures of activities in virtually every country of the world in such a way that dividends from their operating subsidiaries flow - without paying withholding taxes - through holding shell companies in *tax treaty jurisdictions* to end up in holding shell companies in a classic tax havens, where no income tax is levied over this income stream. Subsequently, these untaxed income streams can then be reinvested again in other parts of the world.

A very similar form of tax avoidance occurs when a shell company in a *tax treaty jurisdiction* does not own shares in other companies (i.e. financial assets), but rather patents, trademarks and other intangible assets. These shell companies will then charge other companies in their corporate group to pay royalties for the use of these patents, trademarks, etc. Using tax treaties, no withholding taxes will be charged on these royalties, which will be transferred ultimately to a shell company in a classic tax haven - similarly to the dividend flows in Figure 1.

1.4.2 Trading shell companies

Many companies set up foreign trading subsidiaries to sell and distribute their products in a specific country or region. Normally, these trading subsidiaries are set up in a jurisdiction where the parent company already has a market, or expects to develop a market, for its products.

But sometimes companies also set up trading subsidiaries in a classic tax havens, although there is no domestic market for their products in these jurisdictions. In that case, the trading subsidiary is a trading *shell* company and the main objective to set up this subsidiary is to reduce the consolidated corporate income tax payments of the parent company.

A large part of international tax avoidance structures is stimulated by the fact that - from a legal and taxation standpoint - multinational corporations are usually seen as a group of independent national companies. This enables them to make use of favourable “transfer prices”. A transaction’s transfer price is the price at which one party transfers goods, services or intangibles to another party.

When two related companies - a parent and a subsidiary, or two subsidiaries owned by the same parent company - trade with each other they can try to set the transfer prices of these transactions in such a way that most income is generated in jurisdictions where income taxes are absent. When not controlled, this could be a very important form of tax avoidance as an estimated 60% of international trade takes place within, rather than between, multinational corporate groups.²⁶

If two unrelated businesses trade with each other, then the transfer price agreed is often defined by market forces. This is defined as “arm’s length trade”: the price is the result of genuine negotiations on the market in which the parties are independent and on an equal footing. This arm’s length price is often accepted for tax purposes. But when two related companies (which fall under the same parent) trade together, then they could in principle agree to an artificial price for the transaction in order to avoid taxes. Especially when one of these subsidiaries is a trading shell company located in a classic tax haven, corporate groups can use these artificial transfer prices to shift profits to the subsidiary located in a tax haven where little or no tax is being charged.²⁷

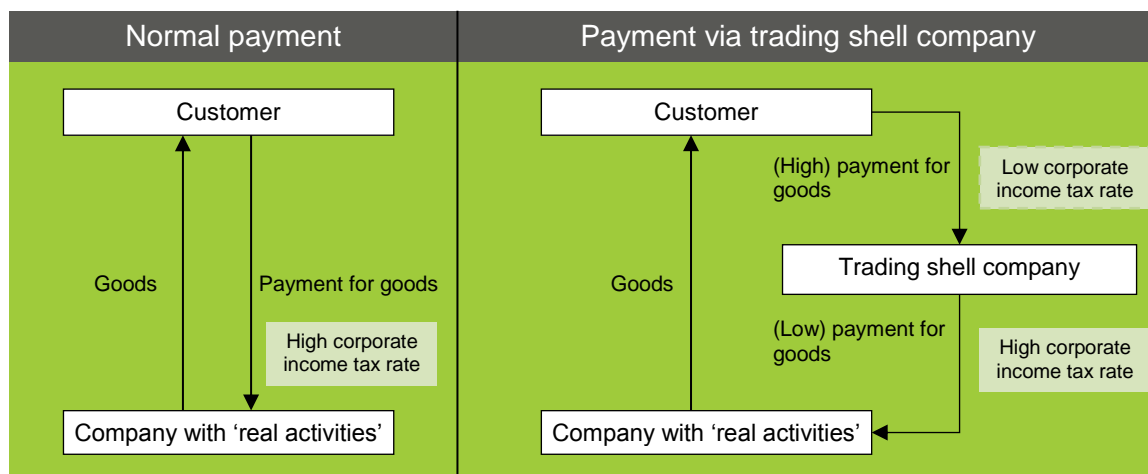
Tax authorities all over the world aim to limit this form of tax avoidance by applying the “arm’s length principle” recommended by the OECD to calculate the fiscal profits of each subsidiary of a multinational group, but due to the absence of market prices and a lack of technical knowledge with tax authorities these efforts have only limited success (see below).

The parent company which is based in a jurisdiction with a high corporate tax rate might sell its goods at a relatively low price to a related trading shell company in a classic tax haven. This trading shell company subsequently sells the same goods at market prices to the actual buyers in other jurisdictions. In most cases, the goods are not physically shipped through the classic tax haven where trading shell company is located, as this would be very impractical or even impossible (e.g. because of the absence of deepwater ports in the tax haven). The physical shipment takes place directly from the supplier to the customer, while the payment is diverted via the trading shell company.

This reduces the operating profits - and thus the corporate income taxes - of the company which is based in the jurisdiction with a high corporate income tax rate, while the profits of the trading shell subsidiary increase - but these are hardly taxed. As the operating profits of all subsidiaries of the group are consolidated at the level of the parent company, the consolidated operating profit (before tax) of the group as a whole will not change because of the detour via a trading shell subsidiary. But the taxes to be paid by the company group, as a whole, will decrease and the consolidated net profit of the group will increase. The effective tax percentage (taxes paid divided by operating profit) will therefore decrease.

Figure 2 demonstrates the role of trading shell companies in international tax avoidance structures.

Figure 2 Tax avoidance through trading shell companies



More than for the other two types of shell companies, limited corporate transparency requirements in the jurisdiction where the trading shell company is located form an advantage. This allows the trading shell company to hide the actual difference between the prices paid and received. In this way the profit realised by the trading shell company, for which the parent company does not have to pay a normal corporate income tax, also remains out of public sight.

Governments aim to ensure that the taxable profits of multinational companies are not artificially shifted out of their jurisdictions and that the tax base reported by the companies in their respective countries reflect the economic activity undertaken in these countries. The OECD recommends its members to adopt the “arm's length principle”. This means that for transactions between related companies, transfer prices must be based on an analysis of pricing in comparable transactions between two or more unrelated parties. However, it is often difficult to determine the “arm's length price” in an independent way and specific rules and their interpretation can vary by country. Globally, this has led to an increasingly complex web of rules, procedural requirements and penalties.²⁸

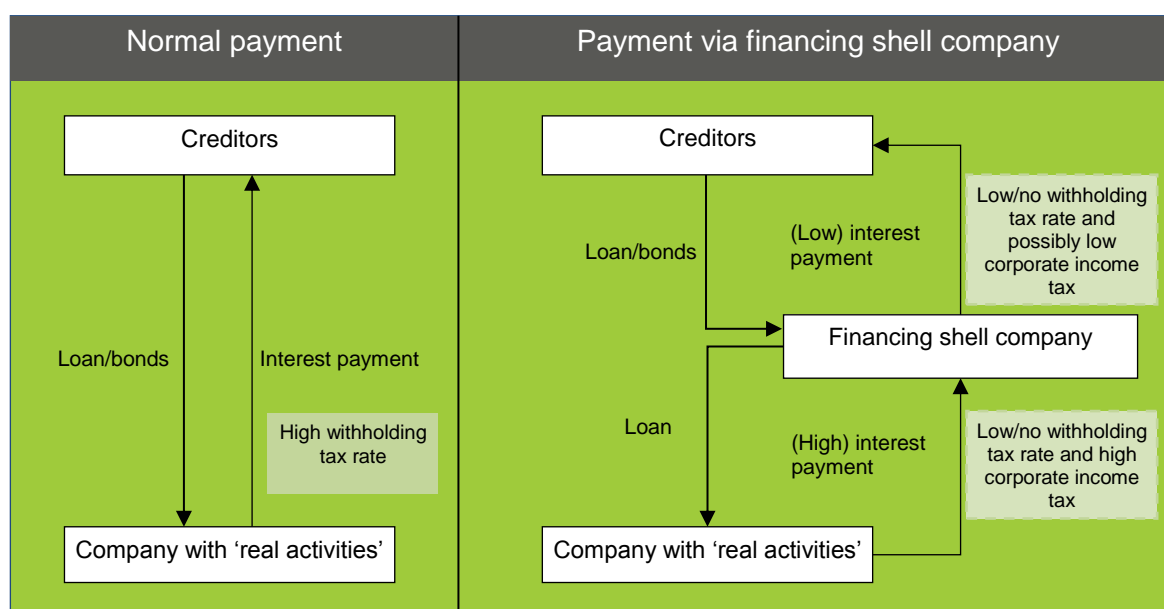
1.4.3 Financing shell companies

A financing shell company is often set up as a subsidiary by a company that aims to borrow money abroad for its activities, in the form of a bank loan or a bond issuance. If the company is located in a jurisdiction which levies a withholding tax on interest payments, its total borrowing costs will increase as the creditors require the receipt of the normal interest rate. To reduce the withholding taxes on interest payments, the company's interest payments to foreign creditors are therefore channelled through a “special purpose vehicle” in an “offshore jurisdiction”.

This terminology refers to a *financing shell company*, specifically set up by the company to attract an international bank loan or issue bonds on the international capital market. The “special purpose vehicle” has no economic substance (no employees nor other activities), but formally attracts the loan (or issues the bonds). The money attracted is immediately lent to the parent company or its subsidiary in need of financing. The “special purpose vehicle” is only set up as an intermediate to reduce withholding tax payments on the interest paid and - in some cases - to reduce total corporate income taxes paid by the company group as a whole.

Figure 3 gives a demonstration of the role of financing shell companies.

Figure 3 Tax avoidance through financing shell companies



Financing shell companies are generally based in jurisdictions that have a tax treaty in place with the jurisdiction in which the company with ‘real activities’ is located. This is because the company with ‘real activities’ has to pay interest to the financing shell company on the loan it has received. Also, one can expect financing shell companies to be based in jurisdictions with no or a low withholding tax on interest payments or one or more tax treaties with the countries in which the creditors providing the finance are located.

Additionally, a low corporate income tax rate in the jurisdiction where the shell company is located, makes it attractive to charge a higher interest rate to the company with ‘real activities’ than the interest rate which has to be paid to the creditors. This increases the net interest income of the financing shell company (which is hardly taxed), while the taxable income of the company with ‘real activities’ would be reduced.

For some types of assets, especially ships, it is not necessary that the financing company lends the money out again. The financing company can invest the money attracted directly in assets, such as ships. By nature, ships are always moving and sailing the seas. There is therefore no limitation to let them be managed by the parent company or another subsidiary of the group. While the financing company then formally is the owner of the ships, it is not involved in the management of the ships and therefore has no ‘substance’.

1.5 International tax avoidance by individuals

Similar to some multinational companies, some (wealthy) individuals also avoid taxes through international tax avoidance structures. In July 2012 a study by James Henry, a former chief economist at the consultancy McKinsey, for the Tax Justice Network, estimated that *High Net Worth Individuals (HNWIs)* from all over the world had at least US\$ 21 trillion hidden in tax havens by the end of 2010. This figure is equivalent to the size of the US and Japanese economies combined. "The lost tax revenues implied by our estimates is huge. It is large enough to make a significant difference to the finances of many countries."

The study is based on data from the Bank of International Settlements, International Monetary Fund, World Bank, and national governments. It deals only with financial wealth deposited in bank and investment accounts, and not other assets such as property and yachts.

The report highlights that HNWIs are able to move money around the globe through an "industrious bevy of professional enablers in private banking, legal, accounting and investment industries". At the end of 2010, the 50 leading private banks alone collectively managed more than US\$ 12.1 trillion in cross-border invested assets for private clients. The three private banks handling the most assets offshore are UBS, Credit Suisse and Goldman Sachs.²⁹

1.6 Who pays the bill?

For national prosperity, a good business climate and economic development, governments need tax payments. With these tax payments, authorities are able to fund public facilities such as infrastructure, education, health care and a social safety net. Companies as well as (wealthy) individuals should contribute to these public facilities - from which they profit as well - by paying a fair amount of tax.

However, because companies avoid taxes on a large scale especially on international transactions, the countries where the company's real economic activities take place and where the company uses public facilities miss out on billions of tax payments. In the end, the citizens and smaller companies, which are not able to make use of (international) tax avoidance structures, pay the bill.

Each year developing countries miss an estimated US\$ 104 billion of tax revenues due to corporate tax avoidance,³⁰ especially through the use of 'false invoicing' and 'trade mispricing'.³¹ Next to this, global tax avoidance due to undeclared private assets held offshore amounts to approximately US\$ 156 billion per year.³² Especially for developing countries that desperately need additional income for services like education, infrastructure and health care, this is worrisome. Christian Aid calculated in 2008 that developing countries annually lose about US\$ 160 billion through tax avoidance by multinational companies, more than one and a half times the combined aid budgets of rich countries (US\$ 103.7 billion in 2007).³³ As an illustration, two examples:

- The average annual loss in tax payments in Ethiopia caused by trade mispricing by companies was US\$ 127 million between 2002 and 2006. This represented 16.2% of the average government revenues (excluding 'grants').³⁴

- Global Financial Integrity reported in 2012 that between 2001 and 2010, approximately US\$ 8.8 billion in tax revenues from Zambia were diverted. Of this amount, US\$ 4.9 billion was attributable to 'trade misinvoicing'. Zambia's national product was US\$ 19.2 billion in 2011. Especially copper companies seem to avoid paying taxes in Zambia. Only a few mines report profits, but most of them report yearly losses in Zambia. Companies are probably using transfer pricing on a large scale.³⁵

Commissioned by Oxfam Novib, SOMO has calculated the financial implications of two major tax avoidance methods for developing countries, particularly by guiding dividends and interest income through the Netherlands. According to SOMO, developing countries lose at least around € 460 million per year (averaged over 2009-2011) through tax avoidance by multinational companies through the Netherlands. Worldwide, governments lose around € 5.4 billion in tax revenue because of the tax haven function of the Netherlands. This estimate is based on figures of total capital flows and is only a rough estimate.³⁶

But not only developing countries miss out on significant tax revenues, most of the tax evasion takes place in countries that are members of the OECD (Switzerland, Luxembourg, the United States, Japan and Germany rank high).³⁷ According to the European Commission, tax evasion and tax avoidance cost European treasuries € 1,000 billion per year. For instance, the Portuguese government misses out on millions in tax revenue because Portuguese companies transfer profits to Dutch mailbox companies.³⁸ A recently published report by SOMO shows that the largest Portuguese companies use shell companies in the Netherlands to avoid tax payments in Portugal, while Portugal in April 2013 announced € 1.2 billion of budget cuts, including a reduction in the public sector of € 600 million.³⁹

Concluding, it can be stated that tax avoidance is an important problem for both poor and rich countries. Especially in times of economic crisis, it is worrisome that governments are in serious financial trouble and through budget cuts have to ask contributions of ordinary citizens, while some of the richest individuals and some of the largest companies in the world do not pay their taxes in a fair manner. Aggressive tax planning by multinational companies also leads to unfair competition, because multinationals are able to avoid tax payments through international avoidance structures, while SMEs do not have the means to do this.⁴⁰

1.7 Banks and international tax avoidance

There are three ways in which banking groups can be involved in international tax avoidance:

- The banking group may shift flows of (interest) costs and revenues between its subsidiaries in various jurisdictions in a way which does not reflect the economic substance of each subsidiary, but which solely aims to minimize the total tax payments of the banking group;
- The banking group may - individually or together with other service providers - offer companies services that enable them to shift their flows of revenues between different jurisdictions in a way which does not reflect the economic substance of each entity, but which solely aims to minimize the company's total tax payments;
- The banking group may facilitate tax avoidance or evasion by wealthy individuals, e.g. by offering bank accounts or asset management services from jurisdictions that do not exchange information about financial assets with (some) foreign tax authorities.

The following three sections will discuss these three different ways in which banks can be involved in international tax avoidance.

1.7.1 Banks avoiding their own taxes

Banks can avoid and evade taxes in a similar manner as other multinationals, but compared to industrial firms they usually have more opportunities to shift profits through internal financing and derivative transactions. Just like the tax payments of multinationals, the current tax payments of international banks may not offer a good reflection of the distribution of their economic activities across different jurisdictions as international banking groups also often have one or more subsidiaries located in tax havens. As described in section 1.4.3, financing transactions between different international subsidiaries of the banking group do offer strong opportunities to avoid taxes, especially when one or more subsidiaries are located in tax havens.

An example is provided by the British bank Barclays, which was ordered in February 2012 by the UK Treasury to pay 500 million pounds in tax which it had tried to avoid. Barclays was accused by HM Revenue and Customs, the British tax authorities, of designing and using two schemes that were intended to avoid substantial amounts of tax.⁴¹

To avoid such forms of international tax avoidance, financial institutions are increasingly expected to be transparent about the taxes they pay in the countries where they operate. For European banks and asset managers *country-by-country reporting* will become mandatory soon - sooner than for other sectors. In July 2013, *European Directive 2013/36/EU* - better known as the *Capital Requirements Directive IV* - came into force. This European directive translates the *Basel Capital Accord III* into European regulations and had to be transposed into legislation by the Member States by 31 December 2013.⁴² As a part of this Directive, starting 1 January 2015 all European banks and asset managers will have to publish a breakdown of their sales, profit before tax, taxes paid and subsidies received for each country in which they operate.⁴³

In The Netherlands, the reporting requirements included in the *Capital Requirements Directive IV* will be included in a separate regulation of the Ministry of Finance, the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten". A concept of this regulation was sent to the Dutch parliament in April 2014 for comments, but a definitive version of the regulation does not seem to be issued yet. The concept regulation stipulated that banks should already publish data on activities, turnover and employees per country for the last financial year (i.e. 2013), ultimately by 1 July 2014. Starting with the financial year 2014, full country-by-country reporting - including data on profits and taxes per country - should be published together with the annual report.⁴⁴

1.7.2 Services of banks to multinationals avoiding taxes

In addition to avoiding or evading taxes themselves, banks sometimes play an important advisory role on international tax avoidance schemes. They can advise multinational companies on the international schemes that can be used to avoid as much tax as possible. An example on the advisory role that banks can play in tax avoidance by their clients was provided in November 2013 by a report published by ActionAid. The British bank Barclays, one of the largest banks in Africa, recommends its clients to guide their investments in Africa through the tax haven of Mauritius. In its brochures, the bank praises Mauritius' 'favourable tax climate' and 'the extensive network of tax treaties that Mauritius has with many countries, including developing countries'.⁴⁵

Banks may also offer other services that facilitate tax avoidance by their corporate clients. They can for instance play a leading role in international lending and/or issuance syndicates in which interest and dividend flows are routed through a subsidiary of the client in a tax haven. This subsidiary is most of the time especially established for this single purpose (a so-called "special purpose vehicle" in an "offshore jurisdiction").

1.7.3 Services of banks to wealthy individuals avoiding taxes

The banking group may facilitate tax avoidance or evasion by wealthy individuals, e.g. by offering bank accounts or asset management services from jurisdictions that do not exchange information about financial assets with (some) foreign tax authorities. This offers private clients the opportunity to invest part of their wealth in these jurisdictions, well managed by the bank. Not all clients will resist the temptation to “forget” declaring their income from these investments to the tax authorities in their country of residence.

In October 2013, it was revealed that HSBC's Private Bank in Geneva widely advised private clients to avoid taxes. The clandestine account holders were helped by the creation of (anonymous) offshore companies in Panama, the British Virgin Islands and other tax havens. In 2008, a former employee of the bank received CDs with the account details of thousands of customers of HSBC Geneva.⁴⁶ Only recently there has been a lot of attention for these findings and they have even caused an uproar. In Belgium, for instance, the findings received a lot of media attention because a Belgian journalist had managed to obtain data about 2,450 customers, including a Belgian diamond trader, CEOs of major companies, ministers and bank managers. In Greece, the publication of a list of Greek account holders (including people from the business and political elite of Greece) even resulted in political unrest.⁴⁷

Chapter 2 Methodology

2.1 Objective

The aim of this case study on Tax Avoidance which Profundo is undertaking for the Eerlijke Bankwijzer (Dutch Fair Bank Guide) is to look for indications if any of the major Dutch banking groups are involved in international tax avoidance practices. While the focus is on Dutch banking groups, the study looks for indications if the Dutch banking groups are involved in tax avoidance practices in relation to taxes required by any jurisdiction in the world - not just Dutch taxes.

The premise of this case study is that companies and individuals should pay taxes where their economic activities take place. Taxation should be based on “substance”: the taxation of companies should be based on the nature and scope of the economic activities in each jurisdiction they are active in, in combination with the applicable tax regulations in these jurisdictions.⁴⁸

Based on this principle, banking groups should neither attempt to use international transactions between different subsidiaries to artificially reduce their overall tax payments while this is not in line with their substance, nor should they support their private and business clients in setting up and using such structures. This case study examines whether the Dutch banking groups comply with this principle and whether there are indications they might be involved in international tax avoidance.

Due to the limited resources and investigative powers we have available for this research project, this study only focuses on tax avoidance and not on tax evasion. Domestic tax avoidance is also left out of consideration, because it is not illegal and, if necessary, can be addressed by national governments. In contrast, it is much more difficult for governments to address international tax avoidance behaviour by companies for various reasons.

There are three ways in which banking groups can be involved in international tax avoidance:

- The banking group may shift flows of (interest) costs and revenues between its subsidiaries in various jurisdictions in a way which does not reflect the economic substance of each subsidiary, but which solely aims to minimize the total tax payments of the banking group;
- The banking group may - individually or together with other service providers - offer companies services that enable them to shift their flows of revenues between different jurisdictions in a way which does not reflect the economic substance of each entity, but which solely aims to minimize the company's total tax payments;
- The banking group may facilitate tax avoidance or evasion by wealthy individuals, e.g. by offering bank accounts or asset management services from jurisdictions that do not exchange information about financial assets with (some) foreign tax authorities.

In this case study we research whether there are indications that the Dutch banking groups are involved in (one of these three types of) international tax avoidance.

2.2 Banking groups researched

The Dutch banking groups researched in this case study are:

- ABN Amro Bank
- Aegon, as the parent company of Aegon Bank and Knab

- ASN Bank⁴⁹
- Delta Lloyd, as the parent company of Delta Lloyd Bank
- ING Group, as the parent company of ING Bank
- NIBC
- Rabobank Group, as the parent company of Rabobank and Friesland Bank
- SNS Reaal, as the parent company of SNS Bank and Regio Bank
- Triodos Bank
- Van Lanschot

2.3 Research approaches

As banks can be involved in international tax avoidance and evasion - to reduce their own consolidated tax payments or to help their clients to reduce their consolidated tax payments - via various activities, this research project will tackle the issue from two angles. These two research steps are described in sections 2.3.1 and 2.3.2.

2.3.1 Subsidiaries in tax havens

As a first step we checked for every banking group whether it has set up one or more subsidiaries or investment funds in *classic tax havens* and *tax treaty jurisdictions* (see section 1.3). As there is no clear definition of a *classic tax haven*, we will limit ourselves to jurisdictions which:

- Charge no or 0% corporate income tax to all companies or to special regime companies;
- Charge no or very limited withholding taxes on international payments;
- Have limited disclosure requirements for companies.

Tax treaty jurisdictions are defined as jurisdictions which have:

- Many tax treaties in place;
- Charge no or very limited withholding taxes on international payments;
- Are recommended by *OCRA Worldwide* for international tax planning by companies.⁵⁰

Besides the recommendations from OCRA Worldwide, we have used a list from Tax Justice Network which identifies tax havens and offshore finance centres, based on data from three different sources. We have only focused on the jurisdictions in the list that are marked as a tax haven or offshore finance centre by all three organisations, that is the OECD, the Financial Stability Forum/IMF and the Tax Justice Network itself. Concretely, by combining the OCRA Worldwide list and the Tax Justice Network list of tax havens, we have focused on subsidiaries of the banking groups in the following jurisdictions.⁵¹

- | | | | |
|--------------------------|-------------------|--------------------|--------------------------|
| • Aruba | • Cook Islands | • Jersey | • Panama |
| • Bahamas | • Curacao | • Liechtenstein | • Saint Kitts and Nevis |
| • Bahrain | • Cyprus | • Luxembourg | • Saint Lucia |
| • Barbados | • Delaware (U.S.) | • Malta | • Samoa |
| • Belize | • Dominica | • Marshall Islands | • Seychelles |
| • Bermuda | • Gibraltar | • Mauritius | • Switzerland |
| • British Virgin Islands | • Grenada | • Monaco | • Turks & Caicos Islands |
| • Brunei | • Guernsey | • Montserrat | • Vanuatu |
| • Cayman Islands | • Ireland | • Nauru | |
| | • Isle of Man | • Niue | |

As far as possible we have checked the company registers of these jurisdictions to identify the subsidiaries of the banking groups registered in these jurisdictions. Additionally, we based our research on the most recent subsidiary list deposited by the banking groups themselves at the Dutch company register. The Dutch banking groups are required by Dutch law to deposit such a list at the company register if they do not disclose their entire subsidiary list in the annual report.⁵²

With regard to the subsidiaries and investment funds of the Dutch banking groups in tax havens, we have aimed to gather information for the past three years concerning the size of the company (assets, turnover, profits), tax payments, number of staff and the products offered, in order to determine, amongst others, whether the company has 'substance'. However, finding this information was hardly possible for any of the subsidiaries found in tax havens, because of a lack of transparency of the banking groups and the company registers in the tax havens.

For as far as information was available, we gathered indications of the involvement of the subsidiaries in international tax avoidance by the banking group itself, or in facilitating international tax avoidance by the private or business clients of the banking group. To this end we research annual reports and other publications of these subsidiaries and investment funds. Additionally, we will study media publications and financial databases.

2.3.2 Special purpose vehicles for international loans or issuances

As a second research step we researched whether, over the last three years, banks have had a leading position in international loans and/or issuance syndicates dealing with "special purpose vehicles" in an "offshore jurisdiction". These are subsidiaries in tax havens, specifically set up by a company to attract an international bank loan or issue bonds on the international capital market. The "special purpose vehicle" usually has no economic substance (no employees nor other activities), but formally attracts the loan (or issues the bonds). The money attracted can be lent to the parent company or its subsidiary in need of financing, but can also be invested in assets directly. In the last case these assets, for instance ships, are then often managed by the parent company or another subsidiary of the group.

In many cases, the *special purpose vehicle* is only set up as an intermediate to reduce withholding tax payments on the interest paid and - in some cases - to reduce total corporate income taxes paid by the company group as a whole.

For every bank we looked at a number of examples of their participation in syndicates providing loans to special purpose vehicles, or in syndicates underwriting bond issuances by special purpose vehicles. For these examples we analysed what kind of tax advantages this construction might offer to the parent company, the actual bank client.

The banks involved were asked to clarify which steps they have taken to exclude the possibility that the *special purpose vehicle* they have provided services to - when it is a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

2.4 Conclusions and recommendations

2.4.1 Preliminary conclusions

Based on our findings in the two research steps described in section 2.3, preliminary conclusions were drawn. If indications were believed to be found for the banking group's involvement in international tax avoidance, these indications were summarized per banking group. A clear distinction was made between indications that would point to involvement of the banking group in international tax avoidance to reduce its own consolidated tax payments and indications of the bank's involvement in facilitating international tax avoidance of its clients. The indications were formulated as questions which the banks should clarify.

2.4.2 Scoring

The banking groups did not receive scores, since it is difficult to make an estimation of the extent to which banking groups are involved in international tax avoidance. Making a good comparison between banking groups is hampered because they are not very transparent about their subsidiaries and about the transactions between them.

For these reasons the research outcomes make it hardly possible to determine which banking groups are not involved in international tax avoidance. It therefore seems inappropriate to assign scores to the banking groups based on the research outcomes. Rather, the research outcomes have resulted in specific questions to the banks involved to clarify which steps they have taken to exclude the possibility that they and/or their clients are involved in forms of international tax avoidance.

2.4.3 Feedback period

The research results and the preliminary conclusions for their own banking group were presented to the banking groups, in order to give them the opportunity to redress factual errors and to comment on the conclusions. Based on these comments, the research results were reviewed again and new conclusions were drawn. All banks, received a second chance to evaluate these conclusions and provide additional information and comments. The banks were also given the opportunity to formulate a concise formal response to the conclusions of the report, to be included in the report.

The banking groups were asked whether they were prepared to make an official commitment in writing to ensure that their involvement in international tax avoidance will be reduced within one year.

2.4.4 Recommendations

When the research report was finalised, the project group of the Eerlijke Bankwijzer (Fair Bank Guide) made recommendations on the options available to banking groups to limit their involvement in international tax avoidance. These recommendations are added to the summary of this research report.

Chapter 3 ABN Amro

3.1 Introduction

Over the year ended December 31, 2013, ABN Amro reported an operating income of € 7,324 million and total expenses of € 5,753 million. This resulted in an operating profit before tax of € 1,571 million. Over this amount, ABN Amro had to pay € 411 million of income tax (an average tax rate of 26%), resulting in a profit after tax of € 1,160 million.⁵³ At the end of December 2013, ABN Amro's total assets had a value of € 372,022 million and the number of FTEs was 22,289.⁵⁴

In May 2014, ABN Amro published a new tax policy on its website, which is summarized as follows: "We recognise the important role taxation can play in our sustainability strategy, where we use our financial expertise for the benefit of society. We aim for a moderate tax risk profile, acting at all times in accordance with all applicable laws and regulations and guided by relevant international standards.

Our aim is to comply with the spirit as well as the letter of the law and with any legitimate disclosure requirement at first demand. We seek to develop strong, mutually respectful relationships with national tax authorities based on transparency and mutual trust. We do not use secrecy jurisdictions or so-called tax havens for tax avoidance, nor do we create or help create tax structures that are intended for tax avoidance, have no commercial substance and do not meet the spirit of the law. Our transfer pricing is always based on the arm's-length principle. Products we offer that include tax advantages for clients are only acceptable when these products fully meet the regulations in force, are transparent and do not contravene the intended purpose of these regulations. We are transparent about our approach to tax and comply with all the relevant rules regarding transparency."⁵⁵

In June 2014, ABN Amro for the first time published an overview of its employees and operating income per country for the year 2013, in the framework of the country-by-country reporting requirements set by the *Capital Requirements Directive IV* of the European Union.⁵⁶ This makes ABN Amro one of the few Dutch banks which meets the deadline (1 July 2014) for this first phase of country-by-country reporting as set by the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten" (see section 1.7.1).

ABN Amro has announced to start reporting on profits and tax payments per country next year, which would allow for a proper assessment if the bank is paying the fair amount of taxes per country.⁵⁷ This commitment is in line with the requirements proposed in the concept version of the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten", which is not yet officially in force.⁵⁸ This announcement of ABN Amro may send a signal to other banks and to the Ministry of Finance that there are no unsurmountable obstacles to a quick introduction of public country-by-country reporting of profits and tax payments.

3.2 Subsidiaries in tax havens

3.2.1 Active subsidiaries

Table 5 shows the subsidiaries of ABN Amro situated in tax havens which are still active. The data listed in the table have been completed with information provided by ABN Amro, and therefore all subsidiaries mentioned are confirmed as being owned by ABN Amro.

Table 5 Active subsidiaries of ABN Amro in tax havens

Tax haven	Name	Objective	Ownership %	Source
Guernsey	ABN Amro (Guernsey) Limited	Banking	100%	59
Jersey	ABN Amro Bank N.V. Jersey Branch	Banking	100%	60
Luxembourg	ABN Amro Bank (Luxembourg) SA	Banking	100%	61
Guernsey	Martello Nominees Limited	Custody Services	100%	62
Switzerland	ABN Amro International Research & Strategy Center SA	Financial research	100%	63
Luxembourg	ABN Amro Life S.A.	Insurance	100%	64
Switzerland	Alcover SA	Insurance	33.81%	65
Guernsey	Admiral Park Property Holdings Limited	Office building	100%	66
Guernsey	Bordage Properties Limited	Office building	100%	67
Guernsey	Les Banques Holdings Limited	Office building	100%	68
Ireland	ABN Amro Property Holdings Limited	Office building	100%	69
Jersey	ABN Amro Property Holding (Jersey) Limited	Office building	100%	70
Luxembourg	ABN Amro Luxembourg Holding S.a r.l.	Provides funding to the bank	100%	71
Bahamas	CM Bulk Limited	Shipping	50%	72
Bermuda	BassDrill Alpha Limited	Shipping	26%	73
Liberia	Auckland Marine Inc.	Shipping	49.95%	74
Liberia	Golden Gunn Corporation	Shipping	33.24%	75
Liberia	Seacarries Lines Inc.	Shipping	49.95%	76
Liberia	Seacarries Services Inc.	Shipping	49.95%	77
Liberia	Wellington Marine Inc.	Shipping	49.95%	78
Luxembourg	Safe Ship Investment Company S.C.A. SICAR	Shipping	48.64%	79
Marshall Islands	Golar LNG 1460 Corporation	Shipping	49.95%	80
Marshall Islands	Aline Holding S.A.	Shipping	50%	81
Marshall Islands	Alma Maritime Limited	Shipping	39%	82

3.2.2 Inactive subsidiaries

The subsidiaries in Table 6 are also confirmed as being owned by ABN Amro, but ABN Amro has indicated that these subsidiaries are no longer active and/or will be liquidated.

Table 6 Inactive subsidiaries of ABN Amro in tax havens

Tax haven	Name	Objective	Ownership %	ABN Amro Comments	Source
Cayman Islands	ECH Investments Limited	Investment advisory company	30%	Inactive	83
Curacao	MeesPierson (Curaçao) N.V.	General banking	100%	Inactive, in liquidation since Dec 2013	84
Luxembourg	BOAZ Management Company (Luxembourg) S.A.	Unknown	100%	Inactive, in liquidation since Feb 2011	85
Switzerland	ABN Amro International Data Center SA	IT services	100%	Inactive, in liquidation since Feb 2014	86
Cayman Islands	FAFCO-01 Limited	Unknown	100%	Inactive, in liquidation since Jan 2014	87
Curacao	MeesPierson Holding (Curaçao) N.V.	Unknown	100%	Inactive, in liquidation since Mar 2013	88
Delaware (U.S.)	N336UA Trust	Unknown	50%	Inactive, in liquidation since May 2009	89
Curacao	MeesPierson (N.A.) N.V.	General bank	100%	Inactive, in liquidation since Nov 2013	90
Curacao	MeesPierson Multi Management Investments N.V.	Real estate	100%	Inactive, will be liquidated	91
Bahamas	FFSB Limited	Unknown	100%	Inactive, will be liquidated	92
Cayman Islands	ABN Amro Fund Services (Cayman) Limited	Unknown	100%	Inactive, will be liquidated	93
Cayman Islands	ABN Amro Retained Services (Cayman) Ltd	Unknown	100%	Inactive, will be liquidated	94
Ireland	ABN Amro Administration Services Limited	Unknown	100%	Inactive, will be liquidated	95
Ireland	ABN Amro Custodial Services (Ireland) Limited	Unknown	100%	Inactive, will be liquidated	96
Ireland	ABN Amro Retained Custodial Services (Ireland) Limited	Unknown	100%	Inactive, will be liquidated	97
Isle of Man	ABN Amro Fund Services (IoM) limited	Unknown	100%	Inactive, will be liquidated	98
Isle of Man	ABN Amro Fund Services (Isle of Man) nominees Limited	Unknown	100%	Inactive, will be liquidated	99
Isle of Man	ABN Amro Fund Services Custodial (IoM) Limited	Unknown	100%	Inactive, will be liquidated	100
Luxembourg	ABN Amro MeesPierson Investments (Luxembourg) SA	Unknown	100%	Inactive, will be liquidated	101
British Virgin Islands	ABN Amro Services (BVI) Limited	Unknown	100%	Liquidated since Feb 2011	102
Curacao	L.C.H. Investments N.V.	Fund management	100%	Will be liquidated	103
Bahamas	Zoë S. Company Limited	Holding company	100%	Will be liquidated	104
British Virgin Islands	O & P Management Limited	Holding company	100%	Will be liquidated	105

Tax haven	Name	Objective	Ownership %	ABN Amro Comments	Source
Cayman Islands	A.B.M.I. Holdings Limited	Holding company	100%	Inactive, will be liquidated when of a legal proceeding of a third party is finalized	106
Guernsey	Global VIEW Investment Fund Limited	Holding company	100%	Will be liquidated	107
Isle of Man	ABN Amro Fund Services Holdings (Isle of Man) Limited	Holding company	100%	Will be liquidated	108
Switzerland	ABN Amro Holding International AG	Holding company	100%	Inactive, will be liquidated	109

3.2.3 Conclusions

No conclusions will be drawn on the ABN Amro subsidiaries listed in Table 6, as ABN Amro has indicated that these subsidiaries are inactive and/or will be liquidated. Most of these subsidiaries are legacies from the old ABN Amro Bank which operated on a much more international scale until 2007.

- **Indications for tax avoidance by ABN Amro**

We concentrate on the banking group's active subsidiaries listed in Table 5, which all seem to undertake real economic activities ("substance"): banking, managing office buildings, managing ships, insurance. For the banking subsidiaries in Guernsey, Jersey and Luxembourg, this is confirmed by the country-by-country reporting of ABN Amro: in Guernsey the bank has 103 employees, in Jersey 69 and in Luxembourg 173.¹¹⁰ The subsidiaries listed in Table 5 as managing office buildings are managing the buildings used by these banking branches.¹¹¹

We therefore conclude that the list of subsidiaries in Table 5 does not provide indications of tax avoidance by the banking group itself, involving structures without economic substance.

- **Indications that services are used for tax avoidance by clients**

Two groups of ABN Amro subsidiaries do raise questions with regard to services provided by the bank which can be used for tax avoidance by its clients:

- As shown in Table 5, ABN Amro has a number of joint-ventures with shipping companies, which own ships. ABN Amro acts as the financier of the ships, but also as the co-owner with a shareholding ranging from 26% to 50%. These subsidiaries are registered in a range of tax havens: Bahamas, Bermuda, Liberia, Luxembourg and the Marshall Islands. ABN Amro states: "Ships are being registered by clients in various countries and it is therefore normal that we, as an international ship financier, are financing companies in those countries."¹¹²

This raises several questions:

- The shipping companies themselves are not operating from these countries, which makes it possible that they have chosen to register their ships in these tax havens because of tax reasons. Has ABN Amro checked this?

ABN Amro comments: "There is a variety of reasons to register ships in offshore locations and it is indeed common practice in this industry. These reasons relate to flagging laws and procedures, costs, finance and legal considerations and commercial benefits. The supporting tax regimes are clearly beneficial, but one should keep in mind that many - including developed - countries have introduced benign tax regimes for shipping activities."¹¹³

- Providing a loan to a shipping company is something different than becoming the co-owner of a ship. Why has ABN Amro chosen to participate in these joint-ventures, especially when they are registered in tax havens?

ABN Amro comments: "The financing activities of ABN Amro comprehend a broad portfolio with different risk profiles, which includes different types of financing arrangements and equity investments. This differentiation in financing arrangements is for the benefit of the clients as well as of ABN Amro and is common use in the shipping market."¹¹⁴

- ABN Amro does not report on the key figures for its investments in the Bahamas, Bermuda, Liberia and the Marshall Islands in its country-by-country reporting, probably because ABN Amro does not control the joint-ventures concerned.¹¹⁵ This raises the question how large the income is that ABN Amro derives from these participations and under which country this income is reflected in the country-by-country reporting? Does ABN Amro also intend to report about (its share of) taxes paid by the joint ventures in which it participates, as part of the announced reporting of profits and tax payments by country?

ABN Amro comments: "ABN Amro does not report these figures in its country-by-country reporting, because ABN Amro does not manage and control these joint ventures."¹¹⁶

- ABN Amro's banking subsidiaries in Guernsey and Jersey are not just providing banking services to the small populations of the two islands. Guernsey has only 65,605 inhabitants, while Jersey has 95,732. With 103 employees in Guernsey, this means that ABN Amro has one employee for every 637 inhabitants on this small island. Surprisingly, Guernsey relatively counts more ABN Amro employees than the Netherlands (16.8 million inhabitants), where ABN Amro has 18,954 employees: one employee per 887 inhabitants.¹¹⁷

ABN Amro's strong presence on the two islands is explained by the fact that the bank branches do not only offer services to the inhabitants of these islands. On its website ABN Amro Jersey states: "Our clients are located all over the world. They consist of Jersey and UK residents, domiciled and non-domiciled individuals, international clients, high-net-worth individuals, shareholders of family businesses, entrepreneurs, corporates and institutions, trusts and pensions funds, charities and foundations."¹¹⁸

This raises the question why a Dutch bank should set up relatively large branches on two Channel Islands to provide services to clients from all over the world? In terms of banking services, the same international clients could probably be served from other jurisdictions as well. In general, banking services offered from jurisdictions like Jersey and Guernsey involve a risk of enabling tax avoidance or evasion by private clients. To a lesser extent, this risk also exists for private banking activities in Luxembourg.

We conclude that for these two groups of ABN Amro subsidiaries - the shipping joint-ventures and the branches in Jersey, Guernsey and Luxembourg - it could be possible that clients use the services of ABN Amro as part of structures to avoid or evade taxes. It would be good if ABN Amro could further clarify which steps are taken to avoid this possibility.

3.3 Financial services provided to special purpose vehicles

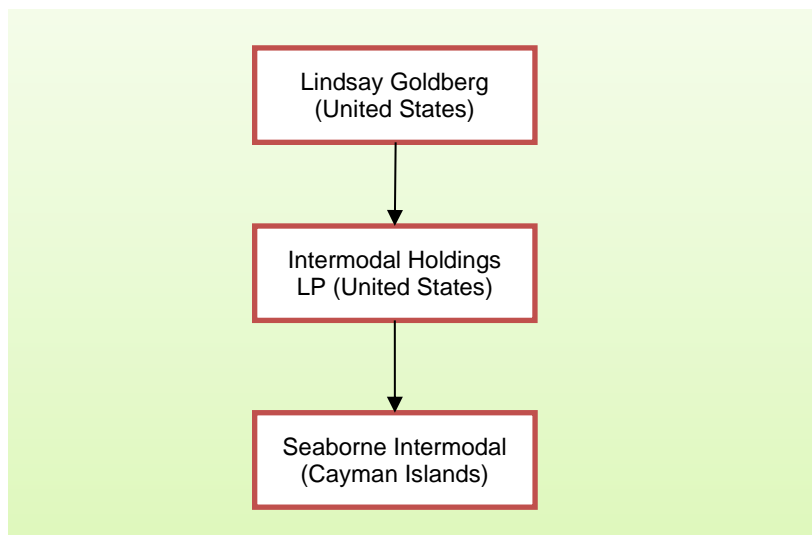
In this section, some cases are discussed in which ABN Amro has provided financial services to special purpose vehicles. ABN Amro has chosen not to comment on these cases, because they involve clients of ABN Amro.¹¹⁹

3.3.1 Seaborne Intermodal

In December 2012, Seaborne Intermodal secured a US\$ 300.00 million (€ 226.95 million) four-year credit facility from a syndicate of three banks. The facility matures in December 2016. The proceeds were used to acquire the BGCM Partnership underlying fleet of container boxes. ABN Amro participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 100 million (€ 75.7 million).¹²⁰

Seaborne Intermodal is a special purpose finance company based in the Cayman Islands.¹²¹ Figure 4 shows the ownership structure of Seaborne Intermodal. Seaborne Intermodal is a subsidiary of Intermodal Holdings LP, an entity formed by US-based private equity firm Lindsay Goldberg in 2012. Intermodal Holdings LP is an intermodal equipment owner and investor that seeks to optimize rental income from intermodal equipment throughout its entire lifecycle.¹²² Lindsay Goldberg typically invests in companies based in North America and in selected companies in Western Europe. It invests between the US\$ 50 million and US\$ 250 million per investment, as the initial investment or as multiple equity investments over time in its portfolio companies. The firm prefers to be a lead investor in its portfolio companies. It seeks to hold board seats in its portfolio companies. The firm investment period in its portfolio companies is typically equal to or greater than ten years.¹²³

Figure 4 Ownership structure of Seaborne Intermodal



Source: Lindsay Goldberg, "Press Release - Successful Sale: The two largest Buss funds sell their container portfolio", *Lindsay Goldberg*, 2 January 2013.

Seaborne Intermodal is attracting loans for the benefit of Intermodal Holdings LP, which is based in the United States. The proceeds of the loan to Seaborne Intermodal were used to acquire a fleet of container boxes, which are managed from the United States by Intermodal Holdings LP.

Seaborne Intermodal therefore is a financing shell company, as described in section 1.4.3. It has no “substance of its own and is set up in a tax haven - the Cayman Islands - which charges no corporate income tax and no withholding tax on interests paid.”¹²⁴ As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that Seaborne Intermodal is involved in forms of international tax avoidance.

3.3.2 Apical

In June 2012, Apical, a subsidiary of the Royal Golden Eagle Group from Indonesia, secured a US\$ 350.00 million (€ 276.82 million) credit facility from a syndicate of 13 banks. The credit facility has a three-year maturity and the proceeds were primarily used to finance the purchase and storage of crude palm oil and/or palm oil products from suppliers for sale to international buyers. ABN Amro participated in the syndicate as a bookrunner and joint mandated lead arranger and committed an estimated amount of US\$ 140.00 million (€ 110.7 million).¹²⁵

Apical is part of the Royal Golden Eagle Group (RGE), and together with partner Asian Agri operates the Tanjung Balai refinery in Sumatra, Indonesia. The Asian Agri Group (Asian Agri) is the agro-business division of the Royal Golden Eagle Group (RGE).¹²⁶

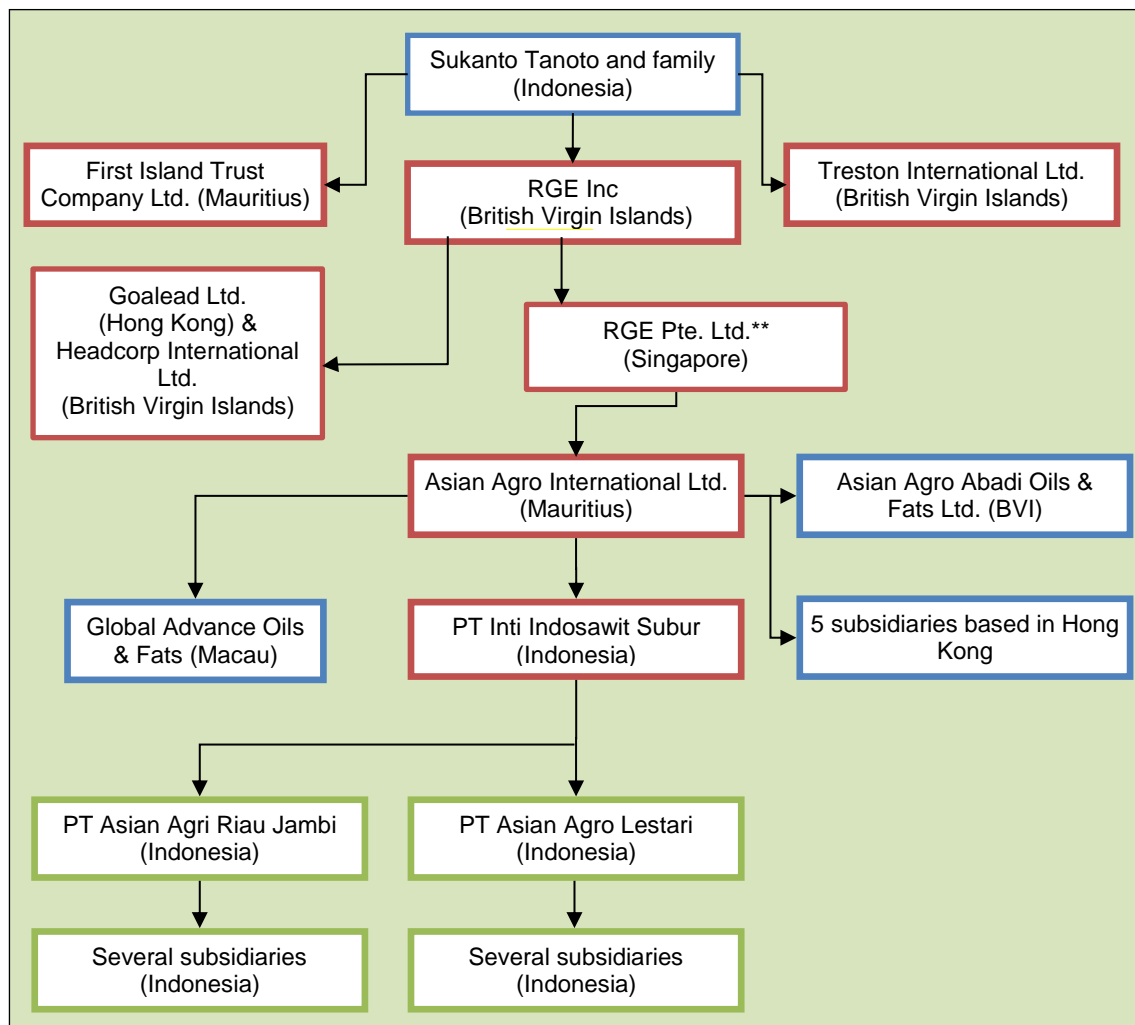
In December 2012, in the first large-scale corporate tax evasion conviction in the history of Indonesia, the Indonesian Supreme Court fined the Asian Agri Group an unprecedented sum equivalent to more than US\$ 200 million for tax evasion from 2002 to 2005 and, in addition, demanded payment of the more than US\$ 100 million still owed in taxes.¹²⁷

Evidence presented in lower court and Supreme Court cases demonstrated that, to carry out its crimes, Asian Agri had routinely utilized shell companies in secrecy jurisdictions including the British Virgin Islands, Macau and Hong Kong as well as international and national banks.¹²⁸

This court case made public - via national court and Supreme Court records - the extraordinarily detailed accounts of the exact methods utilized by this major Indonesian conglomerate to evade taxes. The case was made possible by the fact that the company's former tax department head fled, after an unsuccessful embezzlement attempt, with detailed internal documentation of the company's tax evasion schemes that he subsequently turned over to authorities.¹²⁹

Figure 5 shows the ownership structure of the RGE Group.

Figure 5 Ownership structure of the RGE Group



** Previously known as RGM International. Source: ACRA, "Business Profile of RGE PTE. LTD. (199602948G)", Accounting and Corporate Regulatory Authority (ACRA), Singapore, downloaded January 2014.

Green = 'Real' activities; Red = Investment Holding; Blue = Other.

It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that Apical is involved in forms of international tax avoidance, especially given the fact that sister companies of Apical were challenged in court on charges of tax evasion - for which they were later convicted - at the time when ABN Amro arranged the syndicate.

3.3.3 Gunvor Group

In December 2013, Gunvor International, part of the Gunvor Group, secured a US\$ 1,512 million (€ 1,110.56 million) credit facility from a syndicate of 22 banks. The facility was divided into two tranches: a US\$ 1,210 million facility maturing in December 2014, and a US\$ 305.00 million facility maturing in December 2016. The proceeds were used to refinance existing debt and for general corporate purposes. ABN Amro participated in the syndicate as a bookrunner and mandated arranger and committed an estimated amount of US\$ 100.80 million (€ 74.04 million).¹³⁰

Furthermore, in June 2014, Gunvor Singapore Pte secured a US\$ 536.60 million (€ 389.04 million) credit facility from a syndicate of 18 banks. The facility was divided into two tranches: a US\$ 476.60 million facility maturing in February 2015, and a US\$ 60.00 million facility maturing in March 2017. The proceeds were used to refinance the revolving credit facility dated 6 June 2013 and to finance general corporate and working capital requirements. ABN Amro participated in the syndicate as a bookrunner and mandated arranger and committed an estimated amount of US\$ 30.66 million (€ 22.53 million).¹³¹

There is reason to believe that the Gunvor Group has been avoiding tax payments. After president Putin seized control of political opponent Mikhail Khodorkovsky's Yukos Oil Co. in 2003, many of its most valuable assets ended up in the hands of Rosneft. Rosneft then awarded some trading contracts to Gunvor, helping the company become one of the biggest traders of Russian crude oil. Most of Gunvor's sales are routed through a Dutch unit, Gunvor International, operating through a branch in Geneva. In 2010, the last time Gunvor filed an annual report in the Netherlands, the subsidiary reported US\$ 59 billion in revenue, more than 90% of Gunvor's total sales. Thanks to a ruling from Dutch tax authorities, the unit was able to allocate most of its profit to its Swiss branch, helping to cut Gunvor's global tax bill.¹³² In the Netherlands, Gunvor has only two registered employees.¹³³

Gunvor reports that in addition to the holding parent, registered in Cyprus, there are forty "principal subsidiaries". Of those just three are registered in Russia. Cyprus dominates the registrations of the majority of other "principal" subsidiaries, followed by Switzerland.¹³⁴

In a response to the allegations, Seth Pietras, a Gunvor spokesman said "Gunvor Group is structured for optimal tax planning purposes, the same as other global trading houses," and "operates in full compliance with all applicable tax laws and regulations".¹³⁵

Further discussion about Gunvor concentrates on Gennady Timchenko, co-founder of Gunvor, who is currently under U.S. sanctions. The U.S. has alleged that the Russian president Putin, a presumed friend of Timchenko, also has investments in Gunvor.¹³⁶

It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that Gunvor International is involved in forms of international tax avoidance.

3.3.4 Floatel International

In July 2012, Floatel International, a water transportation service company incorporated in Bermuda and a subsidiary of Oaktree Capital Management (United States), secured a US\$ 200 million (€ 163.16 million) credit facility from a syndicate of four banks. The credit facility matures in July 2017. The proceeds were used for ship financing. ABN Amro participated in the syndicate as a bookrunner and committed an estimated amount of US\$ 60 million (€ 48.95 million).¹³⁷

Floatel International is a financing shell company, as described in section 1.4.3. The company has no substance itself and is set up in a tax haven - Bermuda - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that Floatel International is involved in forms of international tax avoidance.

3.3.5 Credit Suisse

In October 2011, Credit Suisse Guernsey Branch, a company incorporated in Guernsey and a subsidiary of Credit Suisse (Switzerland), issued new bonds with a total value of US\$ 1,706.25 million (€ 1,260.07 million). The bonds will mature in October 2018. The proceeds were used for general corporate purposes. Among the six financial institutions that participated as joint bookrunners in the syndicate was ABN Amro, underwriting an estimated amount of US\$ 284.00 million (€ 209.73 million).¹³⁸

Credit Suisse Guernsey Branch is a financing shell company, as described in section 1.4.3. The company has no substance itself and is set up in a tax haven - Guernsey - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that Credit Suisse Guernsey Branch is involved in forms of international tax avoidance.

3.3.6 Conclusions

In three cases described in this section, ABN Amro operated as a bookrunner to compose a banking syndicate which provided a loan to an special purpose vehicle, a subsidiary of the actual borrower, or helped this special purpose vehicle to issue bonds. These special purpose vehicles do not have economic activities ("substance") in the tax havens where they are set up by the borrower and are set up solely for tax planning purposes.

By operating as the bookrunner of the loan syndicate or the bond issuing syndicate, ABN Amro possibly played a role in enabling the borrowers to avoid interest withholding taxes on their funding requirements and/or to reduce the total corporate income tax of the parent group. It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that the described clients are involved in forms of international tax avoidance.

In the Apical and Gunvor cases, ABN Amro provides financing to companies which are possibly involved in international tax avoidance structures and - in the case of Apical - are convicted for tax evasion. It would be good if ABN Amro could clarify which steps it has taken to exclude the possibility that these clients are involved in forms of international tax avoidance.

3.4 Response ABN Amro

ABN Amro responded as follows to the conclusions of this report:

"We do not use tax havens for aggressive tax planning, nor do we use wholly artificial arrangements to abuse tax treaties. We are completely transparent to the Dutch Tax authorities and all subsidiaries of the bank are known to the Dutch tax authorities. Our clients also make use of tax treaties for valid reasons. We do check to a certain extent whether their transactions might qualify as aggressive tax planning, in which case we will not support their transaction.

Our attitude is to be as transparent as reasonably possible. Recently we have published our tax principles on our website and also information about our activities, operating income and FTE's on a country-by-country basis. Starting next year, this disclosure will also report our profits and tax payments per country."

Chapter 4 Aegon

4.1 Introduction

Over the year ended December 31, 2013, Aegon reported a consolidated income of € 48,254 million and total expenses of € 47,304 million. This resulted in an operating profit before tax of € 971 million. Over this amount, Aegon had to pay € 123 million of income tax (an average tax rate of 12.6%), resulting in a profit after tax of € 849 million.¹³⁹

At the end of December 2013, Aegon's total assets had a value of € 353,621 million and the number of employees was 26,981.¹⁴⁰

Aegon Bank is only active in the Netherlands and publishes figures on its operating income, employees and taxes paid in its annual report, thereby complying with the concept version of the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".¹⁴¹ This regulation will probably enter in to force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

Aegon Group has not published an overview of its employees, operating income and taxes paid per country for the year 2013.

4.2 Subsidiaries in tax havens

4.2.1 Active subsidiaries in tax havens

Table 7 shows the active participations or subsidiaries of Aegon situated in tax havens. Aegon did not provide information for every single entity found, but did confirm that the entities and funds listed in Table 7 are either a participation or a subsidiary of Aegon.¹⁴²

Table 7 Active subsidiaries and funds of Aegon in tax havens

Tax haven	Name	Objective	Ownership %	Status	Source
Bermuda	Global Preferred Re Limited	Reinsurance services	100%	Active	143
Bermuda	Primus Guaranty Ltd.	Default insurance products	20%	Active	144
Bermuda	SA Reinsurance Ltd.	Reinsurance services	50%	Active	145
Bermuda	Transamerica International Re (Bermuda) Ltd.	Unknown	100%	Active	146
Bermuda	Transamerica Life International (Bermuda) Ltd.	Insurance product solutions	Unknown	Unknown	147
Bermuda	Transamerica Life (Bermuda) Ltd.	Insurance and investment products	100%	Active	148
Bermuda	Transamerica (Bermuda) Services Center, Ltd.	Unknown	Unknown	Unknown	149
Bermuda	WFG Reinsurance Limited	Reinsurance products and services	51%	Active	150
Cayman Islands	Cedar Funding Ltd.	Unknown	Unknown	Unknown	151
Cayman Islands	Transamerica Cayman Commodity Strategy, Ltd.	Unknown	Unknown	Unknown	152
Cayman Islands	Transamerica Cayman Global Allocation, Ltd.	Unknown	Unknown	Unknown	153

Tax haven	Name	Objective	Ownership %	Status	Source
Cayman Islands	Transamerica Cayman Global Macro, Ltd.	Unknown	Unknown	Unknown	154
Cayman Islands	Transamerica Cayman Managed Futures Strategy, Ltd.	Unknown	Unknown	Unknown	155
Ireland	Aegon Ireland Plc.	Unknown	99.99%	Active	156
Ireland	Esprit Insurance Limited	Unknown	100%	Active	157
Luxembourg	La Mondiale Europartner S.A.	Wealth management solutions	35%	Active	158

4.2.2 Former subsidiaries of Aegon

The entities in Table 8 were controlled by Aegon in the past⁶ according to various reliable sources. Aegon has indicated that these entities have never been owned by Aegon or are no longer active or are no longer owned by Aegon.¹⁵⁹

Table 8 Former subsidiaries of Aegon in tax havens

Tax haven	Name	Objective	Source
Bermuda	Clark/Bardes (Bermuda) Ltd.	Life insurance brokerage services	160
Bermuda	Transamerica Funding L.P.	Unknown	161
Bermuda	Transamerica International (Bermuda) Money Market Fund Limited	Unknown	162
Cayman Islands	Transamerica Capital Ltd 166793 -so	Unknown	163
Cayman Islands	Transamerica Cayman Federated Market Opportunity VP, Ltd.	Unknown	164
Cayman Islands	Transamerica Cayman Federated Market Opportunity, Ltd.	Unknown	165
Cayman Islands	Transamerica Global Funding Corporation I	Unknown	166
Cayman Islands	Transamerica Global Funding Corporation II	Unknown	167
Cayman Islands	Transamerica Long/Short Fund Ltd.	Unknown	168
Cayman Islands	Transamerica Long/Short Trading Ltd.	Unknown	169

4.2.3 Conclusions

No conclusions will be drawn on the entities listed in Table 8, as Aegon has indicated that these entities have never been owned or are no longer active or no longer owned by Aegon.

• Indications for tax avoidance by Aegon

The Aegon subsidiaries in Ireland and Luxembourg which are listed in Table 7 do seem to engage in economic activities (“substance”), especially insurance activities and investment management.

Aegon comments that it does not consider Luxembourg and Ireland to be tax havens. Also Aegon comments that it has sold a lot of activities in Ireland and now focuses on insurance products with variable annuities there. The activity in Ireland is taxed under the normal Irish tax rate.¹⁷⁰

The different subsidiaries in Bermuda entities do raise some questions, however. Aegon comments that these subsidiaries are not set up for tax purposes. “The profits of these entities are taxed under the normal tax rate in other countries, particularly in the United States. Bermuda is an important country in the world when it comes to reinsurance companies, and this is why Aegon has entities in Bermuda.”¹⁷¹

The prominent role of Bermuda in the global reinsurance market, especially the so-called “captive (re)insurance companies” is confirmed by many sources.¹⁷² That the absence of corporate income taxes in Bermuda plays a role in this prominent position, is clearly advocated by the Bermuda Insurance Market.¹⁷³

It would therefore be good if Aegon could explain further how it guarantees that the location of its reinsurance activities on Bermuda does not lead to the avoidance of taxes due in other jurisdictions.

- **Indications that services are used for tax avoidance by clients**

With regard to the entities on the Cayman Islands mentioned in Table 7, Aegon comments that these “are entirely held by investment funds. These Cayman Island entities hold specific investment portfolios. Our American Business Unit renders investment advisory services to these entities. None of the Aegon subsidiaries is a participant in these investment funds and Aegon does not control these investment funds or the Cayman Island entities. For the US participants in the investment funds, the income is taxed under the normal tax rates.”¹⁷⁴

These comments create some confusion. It is confusing that investment funds managed by Aegon’s American subsidiary Transamerica apparently make use of a Cayman Islands entities - which carry the Transamerica name - to make investments, but over which the company does not have any control. This raises the question for which reason Aegon has created this investment structure, which has no substance (employees and activities) in the Cayman Islands itself.

Aegon states that “all participants in the investment funds with a subsidiary on the Cayman Islands are US investors and that the income earned by these participants is taxed under normal tax rates in the United States.”¹⁷⁵ It would nevertheless be good if Aegon could clarify why these entities are used.

Similar concerns exist for the wealth management activities of Aegon in Luxembourg. This country was a classic tax haven in recent history with low tax rates and no information exchange with other jurisdictions. Under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU. As Luxembourg does not exchange fiscal information with tax authorities in jurisdictions outside the EU, it remains possible that private investors from outside the EU use fund structures and investment management activities in Luxembourg to avoid income and/or withholding taxes.

We conclude that for the fund structures set up by Aegon in the Cayman Islands and its wealth management activities in Luxembourg, it cannot be excluded that they are used by private clients to avoid income and/or withholding taxes. It would be good if Aegon could clarify which steps it has taken to exclude this possibility.

4.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by Aegon to special purpose vehicles.

4.4 Response Aegon

No response was received from Aegon on the conclusions of this report.

Chapter 5 ASN Bank

5.1 Introduction

Over the year ended December 31, 2013, ASN Bank reported a total income of € 127.6 million and total expenses of € 38.4 million. This resulted in an operating profit before tax of € 89.1 million. Over this amount, ASN Bank had to pay € 22.3 million of income tax (a tax rate of 25%), resulting in a profit after tax of € 66.8 million.¹⁷⁶ At the end of December 2013, ASN Bank's total assets had a value of € 10,753 million and the number of FTEs was 125.4 (137 employees).¹⁷⁷

5.2 Subsidiaries in tax havens

No subsidiaries in tax havens owned by ASN Bank were found.

5.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by ASN Bank to special purpose vehicles.

5.4 Response ASN Bank

ASN Bank responded as follows to the conclusions of this report:¹⁷⁸

As stated in our human rights policy: "[Companies] must not engage in transactions and activities that, in our view, abuse the lack of proper tax legislation and its enforcement. This applies particularly to poorer countries where governments have insufficient funds, knowledge and capacity to combat abuse. We do not lend our assistance to such activities, in whatever country, and recommend customers to do the same." ASN Bank pays tax in the Netherlands following Dutch regulation and has no subsidiaries in tax havens.

Chapter 6 Delta Lloyd

6.1 Introduction

Over the year ended December 31, 2013, Delta Lloyd reported a total income of € 5,928 million and total expenses of € 5,689 million. This resulted in an operating profit before tax of € 239.1 million. Over this amount, Delta Lloyd had to pay € 34.1 million of income tax (an average tax rate of 14%), resulting in a profit after tax of € 206.3 million.¹⁷⁹ At the end of December 2013, Delta Lloyd's total assets had a value of € 76,515 million and the number of FTEs was 5,788.¹⁸⁰

Delta Lloyd explains its relative low tax rate as follows: "The lower tax rate in 2013 is primarily due to the application of the participation exemption. The participation exemption is a (European) tax measure that intends to prevent double taxation of business results. Delta Lloyd has various interests of more than 5% in mainly Dutch companies, to which the participation exemption applies: no income tax has to be paid on the dividends received from these participations. Moreover, the acquisition of SA Insurance in Belgium created a lower tax rate of 5.9%."¹⁸¹

Delta Lloyd Bank is active in the Netherlands and Belgium. The bank publishes an overview of its employees and operating income per country in its annual report for the year 2013, there complying with the concept version of the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".¹⁸² This regulation will probably enter in to force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

Delta Lloyd Group has not published an overview of its employees, operating income and taxes paid per country for the year 2013.

6.2 Subsidiaries in tax havens

6.2.1 Active subsidiaries in tax havens

Table 9 shows the subsidiaries of Delta Lloyd situated in tax havens.

Table 9 Subsidiaries and funds of Delta Lloyd in tax havens

Tax haven	Name	Objective	Ownership %	Source
Ireland	Daedalus Plc	Investment fund	100%	183
Luxembourg	Delta Lloyd L - Luxembourg	Investment fund	Unknown	184
Luxembourg	Delta Lloyd Real Estate Management Company S.a.r.l.	Real estate management	100%	185

6.2.2 Conclusions

The following conclusions are drawn on the Delta Lloyd subsidiaries listed in Table 9:

- **Indications for tax avoidance by Delta Lloyd**

On the subsidiary in Ireland, Delta Lloyd explained: “Daedalus Plc is an Irish investment fund which holds investments in *Collateralized Debt Obligations (CDO)* in which Delta Lloyd participates. The fund is tax exempted in Ireland. The results of Daedalus Plc are fully subject to the corporate income tax in the Netherlands.”¹⁸⁶ It would be good if Delta Lloyd could clarify what the reason is that these investments are held by a subsidiary in Ireland, which apparently has no substance (activities, employees, etc.)

- **Indications that services are used for tax avoidance by clients**

Like many other European financial institutions, Delta Lloyd set up a fund structure in Luxembourg in the first place because this makes it possible to attract investors from many different jurisdictions. Delta Lloyd clarifies: “Delta Lloyd L is a so called Sicav (Société d’Investissement à Capital Variable) being a Luxembourg investment fund which is tax exempted. The results of these funds are taxable at the level of the participants in these funds.”¹⁸⁷ Delta Lloyd did not clarify the activities of its other subsidiary in Luxembourg.

Possibly the choice for Luxembourg creates risks, as the country was a classic tax haven in recent history with low tax rates and no information exchange with other jurisdictions. Under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU. As Luxembourg does not exchange fiscal information with tax authorities in jurisdictions outside the EU, it remains possible that private investors from outside the EU use fund structures and investment management activities in Luxembourg to avoid income and/or withholding taxes. It would be good if Delta Lloyd could clarify which steps it has taken to exclude this possibility.

6.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by Delta Lloyd to special purpose vehicles.

6.4 Response Delta Lloyd

Delta Lloyd responded as follows to the conclusions of this report:¹⁸⁸

“Delta Lloyd pays taxes in those countries where we have our operations and at the time the activity takes place. We do not use tax havens and do not make transactions predominantly for tax reasons. Our tax policy is part of the general business principles and values of Delta Lloyd (taxes have to follow the business). The policy is based on the applicable laws and regulations, of which we take the principles and intentions into account as well. When choosing business partners and designing a transaction, including investments, we take into account the tax morale of the transaction.”

Chapter 7 ING

7.1 Introduction

Over the year ended December 31, 2013, ING Group reported a total income of € 26,301 million and total expenses of € 22,194 million. This resulted in an operating profit before tax of € 4,107 million. Over this amount, ING had to pay € 1,013 million of income tax (an average tax rate of 25%), resulting in a profit after tax of € 3,094 million.¹⁸⁹

At the end of December 2013, ING Group's total assets had a value of € 1,081 billion and the number of FTEs was 76,050.¹⁹⁰

ING has concluded an *individual enforcement covenant* with the Dutch tax authorities. In the framework of this covenant, all issues which could provoke fiscal discussions are discussed with the Dutch tax authorities.¹⁹¹

ING states that its profits made through regular banking and insurance activities are taxed locally at the regular tax rates in the countries where these activities take place. ING does not use so-called "tax havens" to reduce the amount of tax paid. When ING has established subsidiaries in so-called tax havens, these are set up for other (e.g. regulatory) reasons.¹⁹²

ING has published an overview of its employees., assets and operating income per country for the year 2013, thereby complying with the concept version of the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".¹⁹³ This regulation will probably enter in to force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

7.2 Subsidiaries in tax havens

7.2.1 Active subsidiaries of ING Group

Table 12 shows the subsidiaries of ING Group situated in tax havens which are still active. The data listed in the table have been completed with information provided by ING Group, and therefore all subsidiaries mentioned are confirmed as being owned by ING Group.

Table 10 Active subsidiaries and funds of ING in tax havens

Tax haven	Subsidiary	Objective	Ownership %	Source
Ireland	ING (Ireland) Limited	Banking activities	99.99%	194
Luxembourg	Hakoris Sarl	Banking activities	100%	195
Luxembourg	ING Belgium International Finance SA	Banking activities	99.99%	196
Luxembourg	ING Luxembourg SA	Banking activities	99.99%	197
Luxembourg	ING Lux-Ré SA	Banking activities	100%	198
Luxembourg	Cherrymont SA	Banking activities	100%	199
Luxembourg	European Marketing Group (Luxembourg) SA	Banking activities	100%	200
Switzerland	ING Belgique, Bruxelles, succursale	Banking activities and trading of securities	Unknown	201

Tax haven	Subsidiary	Objective	Ownership %	Source
Guernsey	ING European Infrastructure (Guernsey General Partner) Limited	Investment funds	Unknown	202
Luxembourg	ING European infrastructure S.A.R.L.	Investment funds	Unknown	203
Mauritius	ING BPO Services Mauritius Ltd.	Holding company for BPO Services India	100%	204
Mauritius	ING Mauritius Holdings	Holding company for Vysya Bank	100%	205
Mauritius	ING Mauritius Investments I	Holding company for Vysya Bank	100%	206
Luxembourg	ING Lease Luxembourg SA	Leasing	100%	207
Luxembourg	Leudelange Office Park SA	Real estate	100%	208
Luxembourg	Société Immobilière ING Luxembourg S.A.R.L.	Real estate	100%	209
Switzerland	ING Real Estate Development Alpenrhein AG	Real estate	Unknown	210
Luxembourg	ING Lux-Ré SA	Reinsurance activities	100%	211
Luxembourg	BNL Food Investments Limited SARL	Unknown	48.92%	212
Luxembourg	Synapsia SA	Unknown	34.81%	213
Luxembourg	Vesalius Biocapital I SA SICAR	Unknown	21.62%	214
Luxembourg	Vesalius Biocapital II Partners SARL	Unknown	20%	215
Luxembourg	Vesalius Biocapital Partners Sarl	Unknown	20%	216

7.2.2 Subsidiaries of NN Group

The subsidiaries in Table 11 are confirmed as being owned by NN Group, a subsidiary of ING Group. NN Group made an Initial Public Offering on 2 July 2014. After completion of the IPO, the ING Group directly or indirectly owned and exercised control over 68% of the NN Group's total issued ordinary shares, and 68% of the voting rights. The ING Group is required to divest more than 50% of its shareholding in the NN Group before 31 December 2015 and the remaining interest before 31 December 2016.²¹⁷

Table 11 Subsidiaries and funds of NN Group in tax havens

Tax haven	Subsidiary	Objective	Ownership %	Source
Cayman Islands	ING Global Currency Fund	Investment funds	Unknown	218
Luxembourg	ING (L)	Investment funds	Unknown	219
Luxembourg	NNI XII (Luxembourg) S.a.r.l.	Investment funds	Unknown	220
Luxembourg	Parcom Ulysses 1 Sarl	Investment funds	Unknown	221
Luxembourg	Parcom Ulysses 2 Sarl	Investment funds	Unknown	222
Luxembourg	ING Lux Insurance International S.A.	Insurance	100%	223
Luxembourg	ING Life Luxembourg SA	Insurance	100%	224
Luxembourg	Ulysses Finance Sarl	Investment management	Unknown	225

Tax haven	Subsidiary	Objective	Ownership %	Source
Luxembourg	ING Investment Management Luxembourg SA	Investment management	100%	226
Switzerland	Altis Investment Management AG	Investment management	100%	227
Switzerland	ING Investment Management (Schweiz) AG	Investment management	100%	228
Bermuda	ING Investment Management (Bermuda) Holdings Limited	Investment Manager	100%	229
Ireland	ING Reinsurance Company International	Reinsurance	100%	230

7.2.3 Inactive subsidiaries of ING Group

The subsidiaries in Table 12 are also confirmed as being owned by ING Group, but ING Group has indicated that these subsidiaries are no longer active and/or will be liquidated.

Table 12 Inactive subsidiaries of ING Group in tax havens

Tax haven	Subsidiary	Objective	Ownership %	Comment ING	Source
Cayman Islands	ING Asia Pacific Growth Spc	Investment funds	100%	In liquidation	231
Cayman Islands	ING Lease Japan Beta L.P.	Aircraft lease	Unknown	In liquidation	232
Cayman Islands	ING Lease Japan Epsilon	Aircraft lease	Unknown	In liquidation since May 2010	233
Cayman Islands	ING Lease Japan Sigma	Aircraft lease	Unknown	In liquidation since May 2010	234
Cayman Islands	ING Lease Japan Steven	Aircraft lease	Unknown	In liquidation since May 2010	235
Cayman Islands	ING Lease Japan Zeta	Aircraft lease	Unknown	In liquidation since May 2010	236
Cayman Islands	ING Lease Japan Prima Ltd.	Aircraft lease	Unknown	In liquidation since Sep 2008	237
Luxembourg	NNI XII (Luxembourg) S.a.r.l.	Investment funds	Unknown	In liquidation	238
Mauritius	ING India Investments Fund Limited	Fund management	100%	In liquidation	239
Mauritius	ING Shanghai Apartments Holding Company Ltd	Real estate	100%	In liquidation	240
Ireland	ING Re (Ireland) Ltd.	Reinsurance	100%	In liquidation	

7.2.4 Conclusions

No conclusions will be drawn on the ING Group subsidiaries listed in Table 12, as ING Group has indicated that these subsidiaries are inactive and/or will be liquidated.

- **Indications for tax avoidance by ING Group**

Among the active subsidiaries in Table 10 and Table 11, the majority seems to be involved in real economic activities (“substance”): banking, insurance or real estate. However, specific figures on assets, turnover, employees, profits and taxes paid are not provided by ING for these subsidiaries.

According to ING, most of the subsidiaries mentioned in Table 10 and Table 11 are related to the fact that the ING Group has active branches in Switzerland, Ireland and Luxembourg with economic substance: offices, employees and banking and insurance activities.²⁴¹ However, nor in its annual reports nor on its websites ING does provide any figures on the number of employees, total assets, turnover, operating profit and taxes paid in these countries (country-by-country reporting). Also, ING does not make clear how these active banking and insurance branches relate to the relatively high number of subsidiaries in these countries (especially in Luxembourg).

Of special interest are furthermore three subsidiaries of ING Group in Mauritius: ING BPO Services Mauritius Ltd., ING Mauritius Holdings and ING Mauritius Investments I. All three subsidiaries acted as holding companies for the shareholdings of ING in two Indian companies: ING BPO Services and Vysya Bank. According to ING, ING Mauritius Holdings will be merged away in the coming months and ING BPO Services Mauritius is empty and will probably be liquidated. But ING Mauritius Investments I, which owns the shareholding in Vysya Bank, will continue to exist.²⁴²

In its comments, ING Group makes clear that the Mauritian holding companies were set up because ING Group feared that India would charge a capital gains tax on the profits which ING Group could eventually make when it wants to sell its shareholdings in these Indian companies. The tax treaty between India and Mauritius exempts Mauritian companies from this capital gains tax. But ING also stresses that listed companies, such as Vysya Bank, are now exempt from this capital gains tax. Apparently the Mauritius holding construction is set up by ING Group just in case India might change this regulation.²⁴³

ING’s fear might be reinforced by the controversy between the Indian government and the British telecom company Vodafone. Since 2007 the Indian government is demanding Vodafone to pay GBP 1.6 billion in capital gains taxes on its acquisition of a 67% stake in what is now known as Vodafone India. A Dutch holding company of Vodafone bought this shareholding from a Cayman Islands registered holding company of Hutchinson Whampoa for US\$ 11.1 billion. The country’s tax authorities argued that, given the deal involved the sale of an Indian asset, capital gains tax was payable.

Vodafone has challenged this demand in court. In January 2012 the Indian Supreme Court ruled in Vodafone’s favour, saying it did not have to pay the tax as the transaction took place between two overseas companies. But two months later, in March 2012, the Indian government issued a retrospective tax amendment - dating back to 1962 - in order to catch the Vodafone deal and others like it.²⁴⁴

In other words: the Indian government wants to be able to charge capital gains taxes when shareholdings in Indian companies are sold from one (foreign) company to another. ING Group's structuring of its Indian shareholdings via Mauritian holding companies without any substance, possibly is motivated by the wish to avoid the payment of such taxes, when the situation might arise. ING argues that a taxable transaction has not yet occurred as ING has not yet sold its shareholding in Vysya Bank and that present Indian legislation would exempt ING from paying capital gains tax.²⁴⁵ But this does not answer the question why the Mauritian holding companies - companies without substance in a tax treaty jurisdiction - are set up in the first place.

Based on the above considerations we conclude that the lists of subsidiaries in Table 10 and Table 11 do not provide strong indications with regard to tax avoidance by the banking group itself, also when considering the average tax rate paid by the banking group in 2013 (25%, see section 7.1). The holding subsidiaries in Mauritius could be set up to avoid potential Indian withholding taxes, but the chances that this structure will actually result in a tax advantage for ING in the future are slim.

- **Indications that services are used for tax avoidance by clients**

ING Group and its subsidiary NN Group have established investment management activities in Luxembourg and Switzerland and have set up investment fund structures in Luxembourg, the Cayman Islands and Guernsey. These fund structures have no substance themselves and could just as well be registered in the country where the investment managers of ING Group and NN Group actually manage these funds, i.e. the Netherlands.

ING explains that these funds are set up in these tax havens to make sure that its clients, originating from various countries, do not pay any additional taxes when pooling investments and are all treated in the same way. Provided all investors are duly taxed at a normal rate in their home country, the insertion of a pooling vehicle does not result in total tax payments that are lower than normal, according to ING.²⁴⁶

ING also suggests that foreign investors, especially from some Asian countries (e.g. China), cannot invest in Dutch investment funds for regulatory reasons and that NN Group therefore has set up a fund structure on the Cayman Islands. "Chinese investors are subject to limitations to invest in Dutch funds. For some other Asian investors further licenses could be obtained by a Dutch fund but this is burdensome and (therefore) not usual in the market and will lead to higher expenses for the fund which would lower the returns for the investor in the fund." ING also draws attention to the tax information exchange agreement which the Cayman Islands have signed with the European Union.²⁴⁷

These arguments can be countered as follows:

- Investors from all over the world can invest in Dutch investment funds, no regulatory barriers exist. However, when this fund would be set up as a *Fiscale Beleggingsinstelling (FBI)* which is the most appropriate form, these investors might be taxed double by a Dutch withholding tax on dividends and by the income tax in their country of residence. This is because when a Dutch FBI is paying dividends to foreign investors, normally a withholding tax of 15% applies. As the Netherlands has concluded tax treaties with many countries, this withholding tax would be reduced - but not to 0% - for most foreign investors. For investors from some countries, with which the Dutch government for various reasons did not want to conclude a tax treaty, the withholding tax of 15% will still apply.

ING's argument that no tax avoidance takes place when investors pay their normal income taxes in their countries of residence, therefore is only half true. When investors invest in an investment fund managed in the Netherlands or in another country where the fund managers actually work, they often have to pay dividend withholding taxes as well to the tax authorities of the country where the fund is managed. By moving the fund structure to the Cayman Islands, ING possibly helps its clients to avoid these withholding taxes.

- The fact that the Cayman Islands and Switzerland are tax havens where transparency requirements are minimal, may potentially enable the avoidance of income taxes by private clients of ING in their countries of residence. The tax information exchange agreement signed between the Cayman Islands and the European Union does not avoid this, as it does not apply to the Asian clients ING aims to attract. Switzerland has concluded an automatic fiscal information exchange agreement with the United States, but has not done this with most other countries in the world.

A similar risk still exists for non-EU investors using investment management activities in Luxembourg. Under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU. As Luxembourg does not exchange fiscal information with tax authorities in jurisdictions outside the EU, it remains possible that private investors from outside the EU use fund structures and investment management activities in Luxembourg to avoid income and/or withholding taxes.

We conclude that for the investment management activities and fund structures set up by ING in tax havens, it is possible that they are used by private clients to avoid income and/or withholding taxes. It would be good if ING could clarify which steps it has taken to exclude this possibility.

7.3 Financial services provided to special purpose vehicles

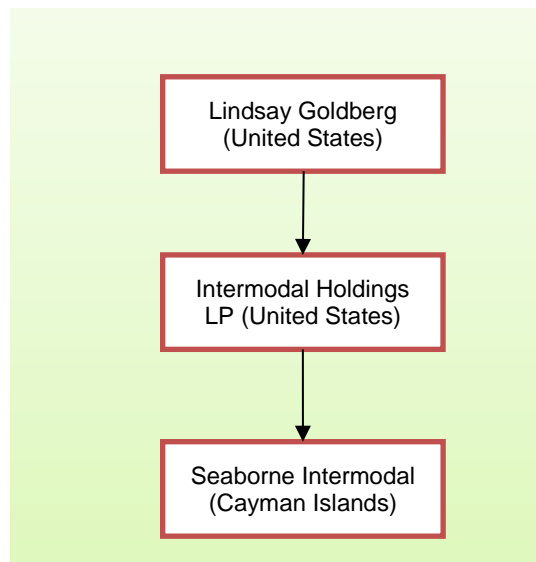
In this section, some cases are discussed in which ING has provided financial services to special purpose vehicles. ING has given some comment on these cases, but these comments are based solely on publicly available information as ING does not disclose client information. On a general note ING states that it does not give advice to clients on tax structures.²⁴⁸

7.3.1 Seaborne Intermodal

In December 2012, Seaborne Intermodal secured a US\$ 300.00 million (€ 226.95 million) four-year credit facility from a syndicate of three banks. The facility matures in December 2016. The proceeds were used to acquire the BGCM Partnership underlying fleet of container boxes. ING participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 100 million (€ 75.7 million).²⁴⁹

Seaborne Intermodal is a special purpose finance company based in the Cayman Islands.²⁵⁰ Figure 4 shows the ownership structure of Seaborne Intermodal. Seaborne Intermodal is a subsidiary of Intermodal Holdings LP, an entity formed by US-based private equity firm Lindsay Goldberg in 2012. Intermodal Holdings LP is an intermodal equipment owner and investor that seeks to optimize rental income from intermodal equipment throughout its entire lifecycle.²⁵¹ Lindsay Goldberg typically invests in companies based in North America and in selected companies in Western Europe. It invests between the US\$ 50 million and US\$ 250 million per investment, as the initial investment or as multiple equity investments over time in its portfolio companies. The firm prefers to be a lead investor in its portfolio companies. It seeks to hold board seats in its portfolio companies. The firm investment period in its portfolio companies is typically equal to or greater than ten years.²⁵²

Figure 6 Ownership structure of Seaborne Intermodal



Source: Lindsay Goldberg, "Press Release - Successful Sale: The two largest Buss funds sell their container portfolio", *Lindsay Goldberg*, 2 January 2013.

Seaborne Intermodal is attracting loans for the benefit of Intermodal Holdings LP, which is based in the United States. The proceeds of the loan to Seaborne Intermodal were used to acquire a fleet of container boxes, which are managed from the United States by Intermodal Holdings LP.

Seaborne Intermodal therefore is a financing shell company, as described in section 1.4.3. It has no substance of its own and is set up in a tax haven - the Cayman Islands - which charges no corporate income tax and no withholding tax on interests paid.²⁵³ As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

This could be the case for Seaborne Intermodal as well. If the loan was provided directly to the parent company Intermodal Holdings in the United States, American interest withholding taxes could have applied. Not for ING's part of the loan, as the Dutch-American tax treaty is reducing interest withholding taxes to 0%. But the banking syndicate consisted of more international banks, and therefore American interest withholding taxes might well have applied for some of the banks when the loan was provided directly to Intermodal Holdings in the United States.

Different from what is shown in Figure 3, the loan provided to Seaborne Intermodal did not have to be lent out again to its parent company, Intermodal Holdings, as Seaborne Intermodal invested the capital directly in a fleet of container boxes. Although Seaborne Intermodal in the Cayman Islands is the owner of these ships, the actual management is in the hands of Intermodal Holdings LP in the United States. The income made by these ships is however taxed in the Cayman Islands, where no corporate income tax applies.

ING comments that no interest withholding taxes are avoided in this case, as interest withholding tax would not apply was provided directly by ING Bank from the Netherlands to the parent company Intermodal Holdings in the United States.²⁵⁴ This ignores the fact that the banking syndicate included banks from different countries.

On the possible reduction of corporate income taxes related to this construction ING comments: "Typically a financing shell company would only make a small margin on funds borrowed and onlent. That would not generate worthwhile tax savings. In addition it is questionable whether the shareholder of the financing shell company could receive the profits (if any) of that company without attracting taxation at that level (so wiping out any potential benefit)."²⁵⁵ This comment ignores the fact that the proceeds of the loan are not onlent to the parent but invested in ships, which possibly generate profits. These profits do not necessarily have to be transferred to the parent company, but can also be invested directly in additional ships.

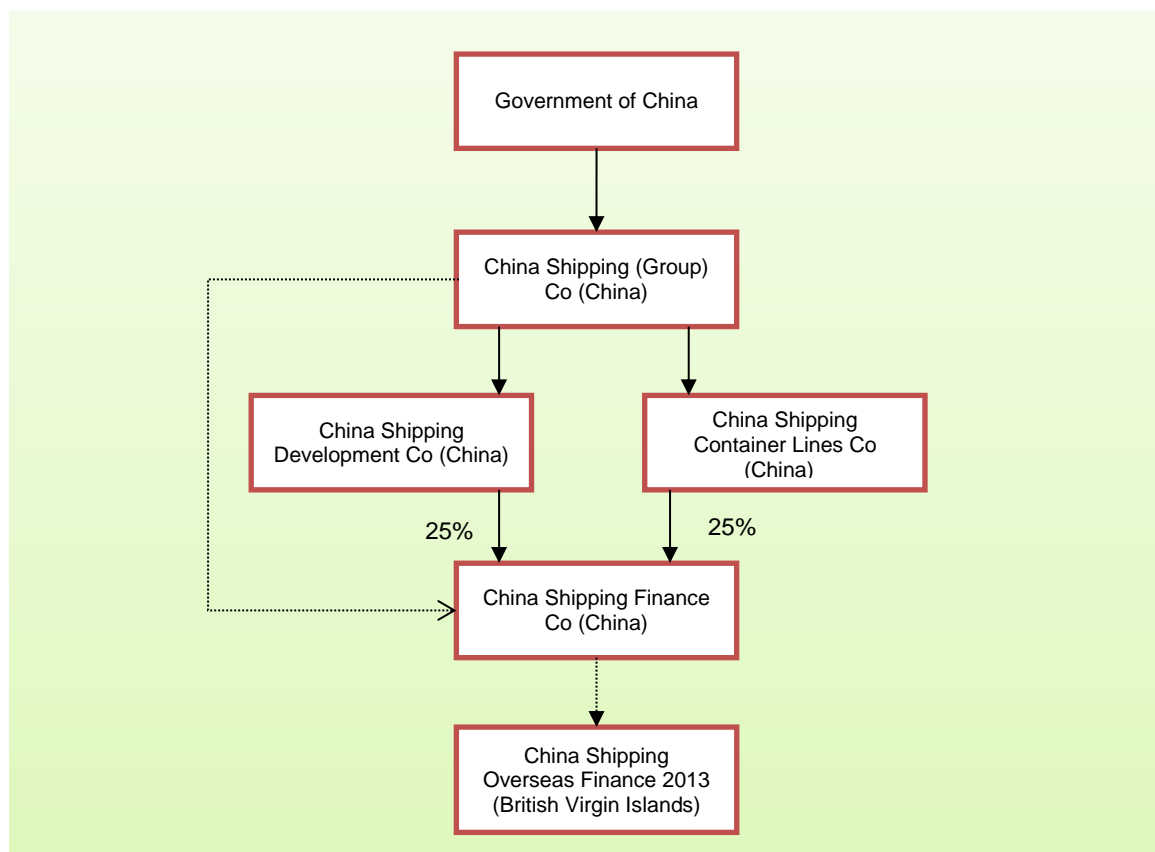
It would therefore be good if ING could clarify further which steps it has taken to exclude the possibility that Seaborne Intermodal - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.2 China Shipping Overseas Finance

In January 2014, China Shipping Overseas Finance 2013 Ltd. issued new 4.250% five-year bonds with a total value of US\$ 500 million (€ 369.1 million). The bonds mature in January 2019. The proceeds were used for general corporate purposes. ING was one of the eight financial institutions that participated in the syndicate as a joint bookrunner, underwriting an estimated amount of US\$ 62.5 million (€ 46.1 million).²⁵⁶

China Shipping Overseas Finance 2013 is based in the British Virgin Islands and is an indirect wholly-owned subsidiary of the China Shipping (Group) Company, a company that provides marine transportation services. China Shipping (Group) Company is one of the key state-owned enterprises under the direct administration of the Central Government of China.²⁵⁷ Figure 7 shows the ownership structure of China Overseas Shipping Finance 2013. China Shipping Overseas Finance 2013 is likely a subsidiary of China Shipping Finance, a company part of the China Shipping Group offering financial services. China Shipping Finance is partially controlled by the China Shipping (Group) Company through the subsidiaries China Shipping Development and China Shipping Container Lines.

Figure 7 Ownership structure of China Overseas Shipping Finance 2013



Source: China Shipping Development Co, "Annual Report 2013", China Shipping Development Co, 2014; *China Shipping Container Lines Co*, "Annual Report 2013", *China Shipping Container Lines Co*, 2014; Clifford Chance, "Clifford Chance advises on China Shipping (Group)'s US\$500 million credit enhanced bonds", *website Clifford Chance* (www.cliffordchance.com/news/news/2014/02/clifford_chance_adviseonchinashippinggroupsus500millioncrediten.html), Viewed in May 2014; China Shipping (Group) Company, "Company Profile", *website China Shipping (Group) Company* (www.cnshipping.com/en/aboutus/), Viewed in May 2014.

China Shipping Overseas Finance 2013 is a *financing shell company*, as described in section 1.4.3. It has no substance of its own and is set up in a tax haven - the British Virgin Islands - which charges no corporate income tax and no withholding tax on interests paid.²⁵⁸ As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

ING comments that no interest withholding taxes are avoided in this case as the BVI do not have tax treaties in place with many countries. This would mean that interest withholding taxes would still apply when the capital attracted is lent by the BVI company. And with regards to the possible reduction of corporate income taxes, ING comments that it is not likely that the BVI company generates profits and that - if it did generate profits - it would be difficult to transfer these profits to the parent company.²⁵⁹

Both comments ignore the fact the BVI company does not have to lend the loan proceeds to its parent, but can invest directly in ships. When these ships generate profits, they are not taxed in the BVI. These profits could then possibly be invested in additional ships, instead of being transferred to the parent.

It would be good if ING could clarify which steps it has taken to exclude the possibility that Seaborne Intermodal - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.3 Gunvor Group

In December 2013, Gunvor International, part of the Gunvor Group, secured a US\$ 1,512 million (€ 1,110.6 million) credit facility from a syndicate of 22 banks. The facility was divided into two tranches: a US\$ 1,210 million facility maturing in December 2014, and a US\$ 305.0 million facility maturing in December 2016. The proceeds were used to refinance existing debt and for general corporate purposes. ING participated in the syndicate as a bookrunner and mandated arranger and committed an estimated amount of US\$ 100.8 million (€ 74.0 million).²⁶⁰

Furthermore, in June 2014, Gunvor Singapore Pte secured a US\$ 536.6 million (€ 389.0 million) credit facility from a syndicate of 18 banks. The facility was divided into two tranches: a US\$ 476.6 million facility maturing in February 2015, and a US\$ 60.0 million facility maturing in March 2017. The proceeds were used to refinance the revolving credit facility dated 6 June 2013 and to finance general corporate and working capital requirements. ING participated in the syndicate as a bookrunner and mandated arranger and committed an estimated amount of US\$ 30.7 million (€ 22.5 million).²⁶¹

There is reason to believe that the Gunvor Group has been avoiding tax payments. After president Putin seized control of political opponent Mikhail Khodorkovsky's Yukos Oil Co. in 2003, many of its most valuable assets ended up in the hands of Rosneft. Rosneft then awarded some trading contracts to Gunvor, helping the company become one of the biggest traders of Russian crude oil. Most of Gunvor's sales are routed through a Dutch unit, Gunvor International, operating through a branch in Geneva. In 2010, the last time Gunvor filed an annual report in the Netherlands, the subsidiary reported US\$ 59 billion in revenue, more than 90% of Gunvor's total sales. Thanks to a ruling from Dutch tax authorities, the unit was able to allocate most of its profit to its Swiss branch, helping to cut Gunvor's global tax bill.²⁶² In the Netherlands, Gunvor has only two registered employees.²⁶³

Gunvor reports that in addition to the holding parent, registered in Cyprus, there are forty "principal subsidiaries". Of those just three are registered in Russia. Cyprus dominates the registrations of the majority of other "principal" subsidiaries, followed by Switzerland.²⁶⁴

In a response to the allegations, Seth Pietras, a Gunvor spokesman said "Gunvor Group is structured for optimal tax planning purposes, the same as other global trading houses," and "operates in full compliance with all applicable tax laws and regulations".²⁶⁵

Further discussion about Gunvor concentrates on Gennady Timchenko, co-founder of Gunvor, who is currently under U.S. sanctions. The U.S. has alleged that the Russian president Putin, a presumed friend of Timchenko, also has investments in Gunvor.²⁶⁶

It would be good if ING could clarify which steps it has taken to exclude the possibility that Gunvor International is involved in forms of international tax avoidance.

7.3.4 Seajacks International

In May 2012, Seajacks International, a company incorporated in Bermuda that owns and operates vessels and is a subsidiary of Marubeni Corp (Japan), secured a US\$ 270.00 million (€ 208.49 million) credit facility from a syndicate of six banks. The facility matures in May 2017. The proceeds were used to back the leveraged buyout by Marubeni Corp and Innovation Network Corp of Japan of UK-based offshore wind service provider Seajacks International. ING participated in the syndicate as a bookrunner and committed an estimated amount of US\$ 45.00 million (€ 34.75 million).²⁶⁷

Also, in February 2014, Seajacks International secured a US\$ 93.28 million (€ 68.17 million) credit facility from a syndicate of five banks. The facility matures in February 2019. The proceeds were used for general corporate purposes. ING participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 18.66 million (€ 13.64 million).²⁶⁸

Seajacks International is a *holding shell company*, as described in section 1.4.1. It has no substance of its own and is set up in a tax haven - Bermuda - which charges no corporate income tax and no withholding tax on dividends paid.²⁶⁹ As described in section 1.4.1, a holding shell company is set up to offer two types of tax advantages to the parent company: avoiding dividend withholding taxes on the dividends paid to the parent company and reducing the total corporate income tax of the parent company.

ING comments that dividend withholding taxes would be levied at the dividends paid by the companies the Bermuda company invests in. These withholding taxes would not be different than when companies would be owned directly by the parent company. Also ING comments that holding companies without further income cannot offset interest expenses against taxable income, hence the effective income tax rate is not reduced.²⁷⁰

As these comments are hypothetical and not based on the actual situation of Seajacks International, it would be good if ING could clarify which steps it has taken to exclude the possibility that Seajacks International - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.5 Allied World Assurance Company

In June 2012, Allied World Assurance Company, an insurance company incorporated in Bermuda and a subsidiary of Allied World Insurance Company (Switzerland), secured a US\$ 450.0 million (€ 360.0 million) credit facility from a syndicate of nine banks. The facility matures in June 2016. The proceeds were used for general corporate purposes, refinancing and capital expenditures. ING participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 57.5 million (€ 46.0 million).²⁷¹

Allied World Assurance Company is a *financing shell company*, as described in section 1.4.3. It has no substance of its own and is set up in a tax haven - Bermuda - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ING could clarify which steps it has taken to exclude the possibility that Allied World Assurance Company is involved in forms of international tax avoidance.

7.3.6 Emirates NBD Tier 1

In May 2013, Emirates NBD Tier 1, a special purpose finance company incorporated in the Cayman Islands and a subsidiary of Investment Corporation of Dubai (United Arab Emirates), issued new bonds with a total value of US\$ 1,000.0 million (€ 776.0 million). The proceeds were used for general corporate purposes. Among the six financial institutions that participated as joint bookrunners in the syndicate was ING, underwriting an estimated amount of US\$ 166.7 million (€ 129.3 million).²⁷²

Emirates NBD Tier 1 is a *financing shell company*, as described in section 1.4.3. It has no substance of its own and is set up in a tax haven - the Cayman Islands - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ING could clarify which steps it has taken to exclude the possibility that Emirates NBD Tier 1 - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.7 ADCB Finance (Cayman)

In August 2013, ADCB Finance (Cayman), a special purpose finance services company incorporated in the Cayman Islands and a subsidiary of Abu Dhabi Commercial Bank (United Arab Emirates), issued new bonds with a total value of US\$ 150.00 million (€ 112.13 million). The bonds will mature in September 2014. The proceeds were used for general corporate purposes. ING was the only bookrunner, underwriting an amount of US\$ 150.00 million (€112.13 million).²⁷³

Furthermore, in February 2014, ADCB Finance (Cayman) issued new bonds with a total value of US\$ 750.00 million (€ 545.70 million). The bonds will mature in March 2019. The proceeds were used for general corporate purposes. Among the four financial institutions that participated as joint bookrunners in the syndicate was ING, underwriting an estimated amount of US\$ 187.50 million (€ 136.43 million).²⁷⁴

ADCB Finance (Cayman) is a *financing shell company*, as described in section 1.4.3. It has no substance of its own and is set up in a tax haven - the Cayman Islands - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ING could clarify which steps it has taken to exclude the possibility that ADCB Finance (Cayman) - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.8 Credit Suisse Guernsey Branch

In January 2012, Credit Suisse Guernsey Branch, a company incorporated in Guernsey and a subsidiary of Credit Suisse (Switzerland), issued new bonds with a total value of US\$ 1,588.71million (€ 1,243.17 million). The bonds will mature in January 2017. The proceeds were used for general corporate purposes. Among the six financial institutions that participated as joint bookrunners in the syndicate was ING, underwriting an estimated amount of US\$ 264.79 million (€ 207.20 million).²⁷⁵

Credit Suisse Guernsey Branch is a financing shell company, as described in section 1.4.3. The company has no substance itself and is set up in a tax haven - Guernsey - which charges no corporate income tax and no withholding tax on interests paid. As described in section 1.4.3, a financing shell company is set up to offer two types of tax advantages to the parent company: avoiding interest withholding taxes on the interest paid on the loan and reducing the total corporate income tax of the parent company.

It would be good if ING could clarify which steps it has taken to exclude the possibility that Credit Suisse Guernsey Branch - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

7.3.9 Conclusions

In seven cases described in this section, ING operated as a bookrunner to compose a banking syndicate which provided a loan to an special purpose vehicle, a subsidiary of the actual borrower, or helped this special purpose vehicle to issue bonds. These special purpose vehicles do not have economic activities ("substance") in the tax havens where they are set up by the borrower and are set up solely for tax planning purposes.

By operating as the bookrunner of the loan syndicate or the bond issuing syndicate, ING possibly played a role in enabling the borrowers to avoid interest or dividend withholding taxes and/or to reduce the total corporate income tax payments of the parent group. It would be good if ING could clarify which steps it has taken to exclude the possibility that the mentioned corporate clients are involved in forms of international tax avoidance.

In the Gunvor case, ING provided financing to a company which is possibly involved in tax avoidance structures and other corporate malpractices. It would be good if ING could clarify which steps it has taken to exclude the possibility that this client is involved in forms of international tax avoidance.

7.4 Response ING

ING responded as follows to the final conclusions of this report:

"ING pays tax at ordinary rates in the countries where it operates as a financial services provider. ING does not use entities in tax havens to reduce its total tax burden. This is also reflected in its global effective tax rate of approximately 25%, which is disclosed publicly."

Chapter 8 NIBC

8.1 Introduction

Over the year ended December 31, 2013, NIBC reported a total income of € 240 million and total expenses of € 217 million. This resulted in an operating profit before tax of € 23 million. Over this amount, NIBC had to pay € 5 million of income tax (an average tax rate of 22%), resulting in a profit after tax of € 18 million.²⁷⁶

At the end of December 2013, NIBC's total assets had a value of € 22,299 million and the number of FTEs was 596.²⁷⁷

In its annual report and the Pillar III report, NIBC has published an overview of employees and operating income paid per country.²⁷⁸ Thereby NIBC complies with the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".²⁷⁹ This regulation will probably enter in to force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

8.2 Subsidiaries in tax havens

NIBC has no subsidiaries in tax havens.²⁸⁰

8.3 Financial services to special purpose vehicles

In this section, one case is discussed in which NIBC has provided financial services to a special purpose vehicle set up by a borrower in a tax haven.

8.3.1 Island Offshore Shipholding

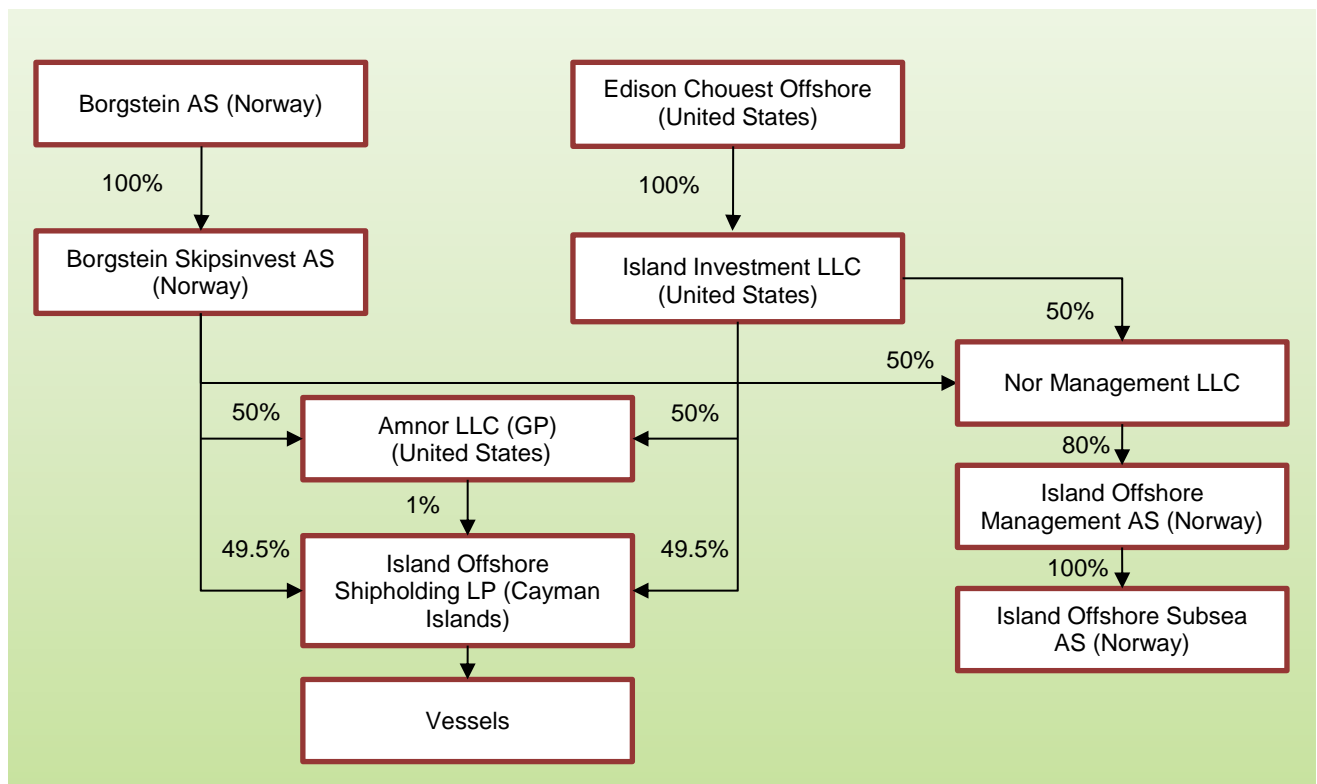
In December 2013, Island Offshore Shipholding LP secured a US\$ 194.86 million (€ 142.52 million) LIBOR+290.000bps five-year credit facility from a syndicate of four banks. The facility matures in December 2018. The proceeds were used to refinance the ship finance loans for the ships Island Frontier, Island Wellserver and Island Champion. NIBC participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 50 million (€ 28.5 million).²⁸¹

Island Offshore Shipholding LP is an investment holding company based in George Town, Cayman Islands. It is a vessel investment company and operates as a holding company for Island Offshore Management in Ulsteinvik (Norway), which provides fleet, technical, and marine operations management services to the offshore oil industry and Island Offshore Subsea in Stavanger (Norway). Island Offshore Subsea develops engineering solutions for subsea well operations.²⁸²

Figure 8 shows the ownership structure of Island Offshore Shipholding, which was incorporated in 2006. The ultimate parent companies of Island Offshore Shipholding are Edison Chouest Offshore, a marine transportation solution provider company based in the United States owned by the Chouest family, and Borgstein, a company based in Norway owned by the Ulstein family.²⁸³

Island Offshore Shipholding is organized as an exempted limited partnership, with Amnor LLC as the General Partner (GP) and Borgstein Skipinvest and Island Investment as the Limited Partners (LPs). Since Borgstein Skipinvest and Island Investment both hold 50% in Amnor, which controls 1% of Island Offshore Shipholding, and 49.5% in Island Offshore Shipholding, they are both owning 50% of Island Offshore Shipholding. Borgstein in turn controls 100% of Borgstein Skipinvest, and Edison Chouest Offshore controls 100% of Island Investment. This makes Borgstein and Edison Chouest Offshore the ultimate parent companies of Island Offshore Shipholding, each controlling 50%.

Figure 8 Ownership structure of Island Offshore Shipholding



Source: Island Offshore, "Investor Presentation", *Island Offshore*, February 2014.

8.3.2 Conclusion

In the case described in this section, NIBC operated as a mandated arranger to arrange a banking syndicate which provided a loan to Island Offshore Shipholding, a *special purpose vehicle* set up by the actual borrowers in the Cayman Islands. This special purpose vehicle does own the ships but does not actually manage them. Island Offshore Management in Norway is responsible for all of the marine and technical operations of the Island Offshore fleet in addition to serving as the contract interface towards the end-clients. Island Offshore Subsea provides engineering services.²⁸⁴

This situation raises the question why the ownership and financing of the ships is directed via Island Offshore Shipholding, a company without substance located in a classic tax haven (the Cayman Islands). It would be good if NIBC could clarify which steps it has taken to exclude the possibility that the two parent companies of Island Offshore Shipholding, via this Cayman Islands structure, are involved in avoiding withholding taxes and/or income taxes.

8.4 Response NIBC

NIBC responded as follows to the final conclusions of this report:²⁸⁵

“NIBC has participated in the research of Profundo and provided extensive information which shows that:

- There is no withholding tax on interest paid in any case, as withholding tax on interest paid from the other potential jurisdiction(s) in this transaction structure, being Norway and/or the US, is also nil.
- Island Offshore Shipholding is a transparent partnership which means that the Norwegian and US partners in this partnership are each taxed for income tax purposes in Norway resp. the US on their share of the income of this partnership.
- Island Offshore Shipholding is a long-standing joint venture between a Norwegian company and an American company, whereby NIBC’s client confirmed that they entered into this collaboration in the form of a Cayman Limited Partnership in the past as their joint venture partner had good experience with the legal system which allows such partnerships to be set up in an efficient way. A special purpose vehicle is commonly used to provide legal security when financing ships or other specific assets.

We regret the fact that our client has been named in this report on tax avoidance, as this case is not an example of avoiding taxes.

In general we would like to state that one of the principles of NIBC’s tax policy is that NIBC does not engage in transactions without economic substance or which are exclusively aimed at safekeeping or realizing tax benefits for itself or for clients.”

The detailed response from NIBC is helpful and sufficiently addresses concerns regarding withholding taxes, but some doubts remain on the consequence of this structure for corporate income taxes, considering that many US-based firms use foreign limited partnerships as so-called hybrid entities in tax avoidance structures.

Chapter 9 Rabobank

9.1 Introduction

Over the year ended December 31, 2013, Rabobank Group reported a total income of € 13,020 million and total expenses of € 12,605 million. This resulted in an operating profit before tax of € 415 million. Over this amount, Rabobank Group had to pay € 68 million of income tax (an average tax rate of 16%), resulting in a profit after tax of € 347 million.²⁸⁶

At the end of December 2013, Rabobank Group's total assets had a value of € 674,139 million and the number of FTEs was 56,870.²⁸⁷

Rabobank has not yet published an overview of its employees and operating income per country for the year 2013, although this overview should have been published by 1 July 2014 according to the concept version of the "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".²⁸⁸ This regulation will probably enter into force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

9.2 Subsidiaries in tax havens

9.2.1 Active subsidiaries in tax havens

Table 10 shows the subsidiaries of Rabobank situated in tax havens.

Table 13 Subsidiaries of Rabobank in tax havens

Tax haven	Subsidiary	Objective	Ownership %	Source
Cayman Islands	Coöperatieve Centrale Raiffeisen-Boerenleenbank B.	Unknown	Unknown	289
Cayman Islands	Erasmus Cayman Corporation	Unknown	100%	290
Cayman Islands	Rabo Asgard Holding Limited	Unknown	Unknown	291
Cayman Islands	Rabo Capital Limited	Unknown	Unknown	292
Cayman Islands	Rabo Duyfken Funding Limited	Unknown	Unknown	293
Cayman Islands	Rabo Investments (UK) Limited	Unknown	Unknown	294
Curacao	Avando Holdings NV	Unknown	100%	295
Curacao	Bairnsdale Holdings N.V.	Unknown	100%	296
Curacao	Pabston Finance N.V.	Unknown	100%	297
Curacao	Rabobank Curaçao N.V.	Unknown	26.10%	298
Curacao	Rabobank Finance Uruguay N.V.	Unknown	100%	299
Curacao	Silver Island Corporation N.V.	Unknown	100%	300
Curacao	Storow Drive N.V.	Unknown	100%	301
Delaware (U.S.)	20/20 Franchisee Funding LLC	Unknown	100%	302
Delaware (U.S.)	Arlon Food And Agriculture and Associates LLC	Unknown	49.50%	303
Delaware (U.S.)	Arlon Food And Agriculture Partners LP	Unknown	24.50%	304

Tax haven	Subsidiary	Objective	Ownership %	Source
Delaware (U.S.)	Aspens II LLC	Unknown	33.30%	305
Delaware (U.S.)	Badgers LLC	Unknown	34.90%	306
Delaware (U.S.)	Blue Sky Timber Properties LLC	Unknown	100%	307
Delaware (U.S.)	Bouwfonds U.S. Residential Fund GP LLC	Unknown	100%	308
Delaware (U.S.)	FIR II LLC	Unknown	33.33%	309
Delaware (U.S.)	FLOR II LP	Unknown	50%	310
Delaware (U.S.)	Harvest Funding LLC	Unknown	100%	311
Delaware (U.S.)	Hawtorn Forests LLC	Unknown	32%	312
Delaware (U.S.)	Hazelnut Forests LLC	Unknown	32%	313
Delaware (U.S.)	Hickory Forests LLC	Unknown	32%	314
Delaware (U.S.)	Leiden Inc	Unknown	100%	315
Delaware (U.S.)	Market Garden Funding LLC	Unknown	100%	316
Delaware (U.S.)	Mirasol Business Trust	Unknown	100%	317
Delaware (U.S.)	Northwest Aspens LLC	Unknown	32%	318
Delaware (U.S.)	Northwest FIR LLC	Unknown	32%	319
Delaware (U.S.)	Pasco Beverage Group LLC	Unknown	49%	320
Delaware (U.S.)	Pasco Juices Inc.	Unknown	49%	321
Delaware (U.S.)	Rabo AG Insurance Services Inc	Unknown	100%	322
Delaware (U.S.)	Rabo Agrifinance Inc	Unknown	100%	323
Delaware (U.S.)	Rabo Capital Services Inc	Unknown	100%	324
Delaware (U.S.)	Rabo Securities USA Inc.	Unknown	100%	325
Delaware (U.S.)	Rabo Support Services Inc.	Unknown	100%	326
Delaware (U.S.)	Rabobank Capital Funding II LLC	Unknown	99.80%	327
Delaware (U.S.)	Rabobank Capital Funding III LLC	Unknown	100%	328
Delaware (U.S.)	Rabobank Capital Funding Trust II	Unknown	100%	329
Delaware (U.S.)	Rabobank Capital Funding Trust III	Unknown	100%	330
Delaware (U.S.)	Rabobank Capital Funding Trust IV	Unknown	100%	331
Delaware (U.S.)	Rabobank Capital Funding Trust V	Unknown	100%	332
Delaware (U.S.)	Rabobank Capital Funding Trust VI	Unknown	100%	333
Delaware (U.S.)	Rabosolar II LLC	Unknown	100%	334
Delaware (U.S.)	RB Receivables LLC	Unknown	100%	335
Delaware (U.S.)	RBD II Inc.	Unknown	100%	336
Delaware (U.S.)	RBE Holdings LLC	Unknown	100%	337
Delaware (U.S.)	RBIP Inc.	Unknown	100%	338
Delaware (U.S.)	RBJR Inc.	Unknown	100%	339
Delaware (U.S.)	RBKC Inc.	Unknown	100%	340
Delaware (U.S.)	RGS Capital LLC	Unknown	26.67%	341
Delaware (U.S.)	Ropers LLC	Unknown	34.90%	342

Tax haven	Subsidiary	Objective	Ownership %	Source
Delaware (U.S.)	Sao Paulo Partners LLC	Unknown	34.90%	343
Delaware (U.S.)	SFE Citrus Processors GP LLC	Unknown	49%	344
Delaware (U.S.)	SFE Citrus Processors LP	Unknown	49%	345
Delaware (U.S.)	Southeast Timber Inc.	Unknown	100%	346
Delaware (U.S.)	Southern Michigan Dairies LLC	Unknown	100%	347
Delaware (U.S.)	Southland Timber Holdings LLC	Unknown	100%	348
Delaware (U.S.)	Texans LLC	Unknown	34.90%	349
Delaware (U.S.)	Utrecht America Finance Co.	Unknown	100%	350
Delaware (U.S.)	Utrecht America Financial Services Corp.	Unknown	100%	351
Ireland	ACC Bank Plc	Banking	100%	352
Ireland	AGCO Finance Ltd. Dublin	Banking	100%	353
Ireland	CCRB Dublin Finance	Banking	100%	354
Ireland	De Lage Landen Ireland Company	Leasing	100%	355
Ireland	De Lage Landen Leasing Company	Leasing	100%	356
Ireland	De Lage Landen Liquid Investments Ltd.	Unknown	100%	357
Ireland	De Lage Landen Re Ltd.	Reinsurance	100%	358
Ireland	Qulpic Ltd.	Unknown	100%	359
Ireland	Rabo Ireland Group Pension Trustee Ltd.	Unknown	100%	360
Ireland	Rabobank Ireland Plc	Banking	100%	361
Ireland	RI GD Investments Ltd.	Unknown	100%	362
Ireland	ZRKO Ltd.	Unknown	100%	363
Luxembourg	AMFICO SARL	Unknown	100%	364
Luxembourg	Betafence Topco Holding SARL	Unknown	36.95%	365
Luxembourg	Bouwfonds International Real Estate Fund Services Luxembourg SARL	Unknown	100%	366
Luxembourg	Interleasing Luxembourg S.A.	Unknown	99.80%	367
Luxembourg	Nemab SARL	Unknown	50%	368
Luxembourg	RI Luxembourg Finance SARL	Unknown	100%	369
Mauritius	London 8 Ltd.	Unknown	26.10%	370
Mauritius	Rabo Equity Management Company Limited	Unknown	Unknown	371

9.2.2 Conclusions

The following conclusions are drawn on the Rabobank subsidiaries listed in Table 13:

- **Indications for tax avoidance by Rabobank**

In its comments, Rabobank stresses that its subsidiaries in Ireland have substance: “Rabobank has a significant presence in Ireland, both to provide services to the local market and to provide services to international companies. For the latter, Ireland offers a good infrastructure, including the presence of a relatively low tax rate and the possibility to consult with the tax authorities.”³⁷²

For the subsidiaries on Curacao, Rabobank states that it uses these entities “to finance its South American activities, since restrictions apply in several South American countries, especially for the financing of cross-border transactions”.³⁷³ Some of the restrictions referred to possibly have a fiscal nature, such as withholding taxes. It would therefore be good if Rabobank could explain further how much substance the activities in Curacao have and how it guarantees that the location of its financing companies on Curacao does not lead to the avoidance of taxes due in other jurisdictions.

- **Indications that services are used for tax avoidance by clients**

Two groups of Rabobank subsidiaries do raise questions with regard to services provided by the bank which can be used for tax avoidance by its clients:

- On the subsidiaries in the Cayman Islands, Luxembourg and Mauritius listed in Table 13, Rabobank comments that these entities are set up “in order to make sure that clients of common funds do not pay any additional taxes such as income tax and withholding tax on the dividend”³⁷⁴

It is not clear if these subsidiaries have substance themselves or are actually managed from other countries. If the latter is the case, the use of shell companies located in tax havens could help its clients to avoid taxes they would have had to pay when they would have dealt directly with Rabobank from their own countries of residence. It would be good if Rabobank could clarify more about the nature and activities of the subsidiaries in these three countries.

Also, because the Cayman Islands and Mauritius have hardly any disclosure requirements for companies (see Table 4), it would be helpful if Rabobank would be transparent about the size of investments managed through these entities for different investors - broken down by country of residence of the investors. In general, investment services offered from jurisdictions like the Cayman Islands and Mauritius involve a risk of enabling tax avoidance or evasion by private clients.

To a lesser extent this risk also exists for investment management activities in Luxembourg. Under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU. As Luxembourg does not exchange fiscal information with tax authorities in jurisdictions outside the EU, it remains possible that private investors from outside the EU use fund structures and investment management activities in Luxembourg to avoid income and/or withholding taxes.

It would therefore be good if Rabobank could clarify how it ensures that the earnings made by its clients in the Cayman Islands, Luxembourg and Mauritius are reported to the tax authorities in the countries of residence of these investors.

- On the long list of subsidiaries in Delaware listed in Table 13, which are apparently set up as joint-ventures with a large number of corporate clients, Rabobank states: “The presence of companies in the U.S. state of Delaware has no tax background. These entities are independent taxpayers or their results are for tax reasons proportionally distributed among to the owners. The choice for Delaware is particularly motivated by the fact that the local civil law creates a lot of flexibility, simplicity and speed when establishing a company. These companies are therefore often used as a special purpose vehicle for individual financing or the management of these financing activities.”³⁷⁵

An article published in the New York Times in June 2012 states however: “It is also a great place to reduce a tax bill. Delaware today regularly tops lists of domestic and foreign tax havens because it allows companies to lower their taxes in another state - for instance, the state in which they actually do business or have their headquarters - by shifting royalties and similar revenues to holding companies in Delaware, where they are not taxed.” Other US states, such as Pennsylvania, are trying to implement laws to close this “Delaware loophole”.³⁷⁶

As Rabobank’s subsidiaries in Delaware apparently do not undertake economic activities (“substance”) in Delaware themselves, it would be good if Rabobank could clarify how it ensures that the location of these entities in Delaware does not lead to the avoidance of taxes due in other jurisdictions.

We conclude that for these two groups of Rabobank subsidiaries - the Delaware joint-ventures and the subsidiaries in the Cayman Islands, Mauritius and Luxembourg - it could be possible that clients use the services of Rabobank as part of structures to avoid or evade taxes. It would be good if Rabobank could clarify which steps are taken to avoid this possibility.

9.3 Financial services to special purpose vehicles

In this section, some cases are discussed in which Rabobank has provided financial services to special purpose vehicles located in tax havens. Rabobank has chosen not to comment on these cases.

9.3.1 Masisa Overseas

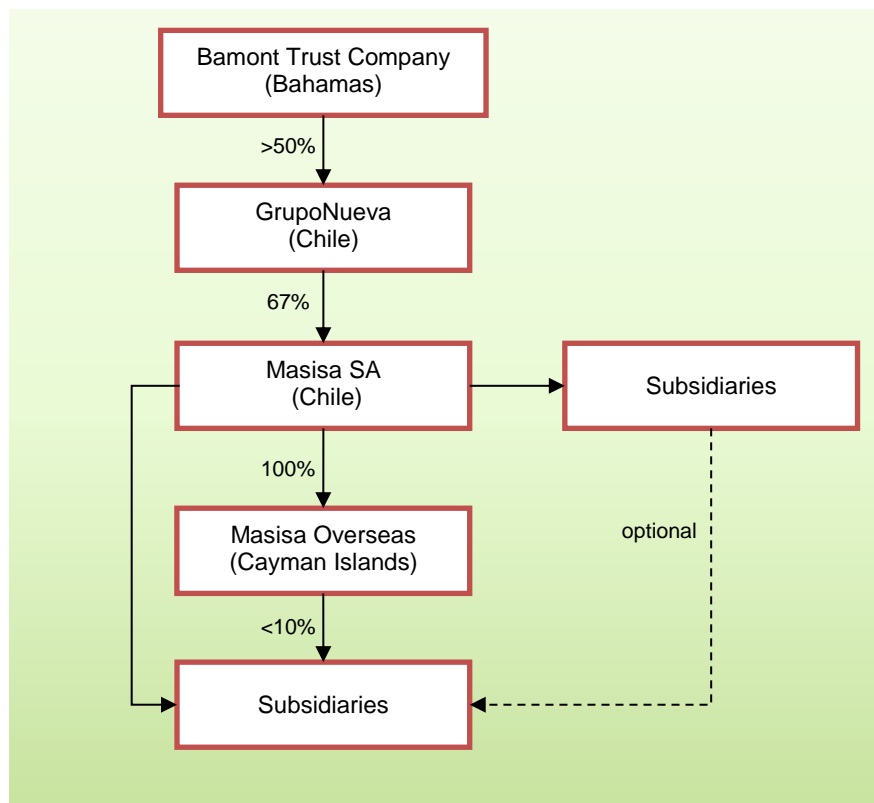
In August 2011, Masisa Overseas secured a US\$ 150.00 million (€ 104.55 million) five-year credit facility from a syndicate of four banks. The facility matures in August 2016. The proceeds were used to refinance bank debt. Rabobank participated in the syndicate as the (only) bookrunner and committed an estimated amount of US\$ 60.00 million (41.82 million).³⁷⁷

Masisa Overseas is a special-purpose company for raising funds off-shore.³⁷⁸ It is based in the Cayman Islands and is a subsidiary of the Chilean company Masisa, a wood particle and fiber boards producer/marketer for furniture and interior architecture in Latin America.³⁷⁹ Masisa is listed on the Santiago Stock Exchange. Figure 9 shows the (simplified) ownership structure of Masisa Overseas. Masisa Overseas is an wholly owned subsidiary of Masisa. Masisa, in turn, is 67% controlled by GrupoNueva, a company that engages in the forestry and wood derivatives businesses. The ultimate parent company of Masisa Overseas is Bamont Trust Company, a company based in the Bahamas.

Masisa Overseas holds a non-controlling share in some of the subsidiaries of the Masisa Group. Masisa usually holds the remaining shares of these subsidiaries, directly or through other subsidiaries.³⁸⁰ Except for Masisa Overseas, all of the subsidiaries of Masisa are situated in Chile, Peru, the United States, Mexico, Ecuador, Panama, Venezuela, Colombia and Argentina.³⁸¹

As Masisa Overseas is a company without substance located in a classic tax haven, it is possible that Masisa Overseas was set up to reduce withholding taxes and/or income taxes of the Masisa Group as a whole. The Cayman Islands levy no withholding taxes and no corporate income tax.³⁸²

Figure 9 Ownership structure of Masisa Overseas



Source: Orbis Database, "Masisa Overseas Limited", *Orbis Database*, Viewed in May 2014; Masisa, "Bank Meeting Presentation", *Masisa*, June 2010; Morningstar, "Document Research Masisa S.A.", *Morningstar*, November 2006.

It would be good if Rabbobank could clarify which steps it has taken to exclude the possibility that Masisa Overseas - a company without substance set up in a classic tax haven - is involved in forms of international tax avoidance.

9.3.2 Gunvor Group

In December 2013, Gunvor International, part of the Gunvor Group, secured a US\$ 1,512 million (€ 1,110.56 million) credit facility from a syndicate of 22 banks. The facility was divided into two tranches: a US\$ 1,210 million facility maturing in December 2014, and a US\$ 305.00 million facility maturing in December 2016. The proceeds were used to refinance existing debt and for general corporate purposes. Rabobank participated in the syndicate as a bookrunner and mandated arranger and committed an estimated amount of US\$ 100.80 million (€ 74.04 million).³⁸³

Furthermore, in June 2014, Gunvor Singapore Pte secured a US\$ 536.60 million (€ 389.04 million) credit facility from a syndicate of 18 banks. The facility was divided into two tranches: a US\$ 476.60 million facility maturing in February 2015, and a US\$ 60.00 million facility maturing in March 2017. The proceeds were used to refinance the revolving credit facility dated 6 June 2013 and to finance general corporate and working capital requirements. Rabobank participated in the syndicate as a mandated arranger and committed an estimated amount of US\$ 29.27 million (€ 21.51 million).³⁸⁴

There is reason to believe that the Gunvor Group has been avoiding tax payments. After president Putin seized control of political opponent Mikhail Khodorkovsky's Yukos Oil Co. in 2003, many of its most valuable assets ended up in the hands of Rosneft. Rosneft then awarded some trading contracts to Gunvor, helping the company become one of the biggest

traders of Russian crude oil. Most of Gunvor's sales are routed through a Dutch unit, Gunvor International, operating through a branch in Geneva. In 2010, the last time Gunvor filed an annual report in the Netherlands, the subsidiary reported US\$ 59 billion in revenue, more than 90% of Gunvor's total sales. Thanks to a ruling from Dutch tax authorities, the unit was able to allocate most of its profit to its Swiss branch, helping to cut Gunvor's global tax bill.³⁸⁵ In the Netherlands, Gunvor has only two registered employees.³⁸⁶

Gunvor reports that in addition to the holding parent, registered in Cyprus, there are forty "principal subsidiaries". Of those just three are registered in Russia. Cyprus dominates the registrations of the majority of other "principal" subsidiaries, followed by Switzerland.³⁸⁷

In a response to the allegations, Seth Pietras, a Gunvor spokesman said "Gunvor Group is structured for optimal tax planning purposes, the same as other global trading houses," and "operates in full compliance with all applicable tax laws and regulations".³⁸⁸

Further discussion about Gunvor concentrates on Gennady Timchenko, co-founder of Gunvor, who is currently under U.S. sanctions. The United States have alleged that the Russian president Putin, a presumed friend of Timchenko, has investments in Gunvor.³⁸⁹

It would be good if Rabobank could clarify which steps it has taken to exclude the possibility that Gunvor International is involved in forms of international tax avoidance.

9.3.3 Conclusion

In the Masisa case described in this section, Rabobank operated as the bookrunner arranging a banking syndicate which provided a loan to a *special purpose vehicle* on the Cayman Islands, a subsidiary of the actual borrower. This special purpose vehicle does not have economic activities ("substance") in the tax haven where it is set up by the borrower. It would be good if Rabobank could clarify which steps it has taken to exclude the possibility that this client is involved in forms of international tax avoidance.

In the Gunvor case, Rabobank provided financing to a company which is possibly involved in tax avoidance structures and other corporate malpractices. It would be good if Rabobank could clarify which steps it has taken to exclude the possibility that this client is involved in forms of international tax avoidance.

9.4 Response Rabobank

Rabobank responded as follows to the final conclusions of this report:³⁹⁰

"The Rabobank has explained its fiscal policy on page 21 and 22 of its Sustainability Report 2013.³⁹¹ This explanation should not be interpreted as responding to, or supporting, the contents nor the tenor of this report of the Dutch Fair Bank Guide."

Chapter 10 SNS Reaal

10.1 Introduction

Over the year ended December 31, 2013, SNS Reaal reported a total income of € 6,291 million and total expenses of € 6,737 million. This resulted in an operating loss before tax of € 446 million. Over this amount, SNS Reaal received € 32 million of tax returns (a tax rate of -7%), resulting in a loss after tax of € 414 million.³⁹²

At the end of December 2013, SNS Reaal's total assets had a value of € 124,574 million and the number of FTEs was 6,379.³⁹³

10.2 Subsidiaries in tax havens

10.2.1 Active subsidiaries in tax havens

For SNS Reaal one subsidiary situated in a tax haven was found. This 100% subsidiary is called NV Pensioen ESC and is located on Curacao. According to SNS Reaal "NV Pensioen ESC holds the pension liabilities for 2,800 former employees of the former Shell refinery in Curacao. Our client left Curacao in 1987 and a local foundation took over the pension liabilities. This foundation outsourced the assets and liabilities to NV Pensioen ESC."³⁹⁴

10.2.2 Conclusions

The only subsidiary of SNS REAAL in a tax haven clearly undertakes economic activities ("substance") in the tax haven itself. The pension fund is specifically set up for employees who worked in Curacao. This subsidiary originates from Curacao and has strong local ties. It is therefore is not set up with the purpose to avoid international taxes.

10.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by SNS Reaal to special purpose vehicles.

10.4 Response SNS Reaal

SNS Reaal responded as follows to the final conclusions of this report:³⁹⁵

"SNS Reaal appreciates and encourages the Eerlijke Bankwijzer to challenge our company regarding our responsibility. Regarding tax avoidance, SNS Reaal takes the view of the OECD-guidelines, that tax avoidance should be avoided at all times. As expected this research confirms the fact that we are not involved in any kind of tax avoidance. The only subsidiary of SNS Reaal in a tax haven is a pension fund specifically set up for employees who worked in Curacao for one of our clients. This subsidiary originates from Curacao and has strong local ties. It is therefore is not set up with the purpose to avoid international taxes"

Chapter 11 Triodos Bank

11.1 Introduction

Over the year ended December 31, 2013, Triodos Bank reported a total income of € 163.7 million and total expenses of € 129.5 million. This resulted in an operating profit before tax of € 34.2 million. Over this amount, Triodos Bank had to pay € 8.5 million of income tax (an average tax rate of 25%), resulting in a profit after tax of € 25.7 million.³⁹⁶ At the end of December 2013, Triodos Bank's total assets had a value of € 6,447 million and the number of employees was 911.³⁹⁷

In its annual report, Triodos provides a clear overview of income, costs, number of employees, assets, profits and taxes paid per country where the banking is active in.³⁹⁸ Triodos thereby complies already with the “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten”. This regulation will probably enter in to force in the coming months and will require full country-by-country reporting by banks and investment managers - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).³⁹⁹

11.2 Subsidiaries in tax havens

11.2.1 Active subsidiaries and funds in tax havens

Triodos Bank has no subsidiaries in tax havens. Table 14 shows the funds managed by Triodos Bank which are situated in tax havens.

Table 14 Funds of Triodos Bank in tax havens

Tax haven	Name	Objective	Ownership %	Source
Luxembourg	Triodos OGF Luxco S.A.R.L.	investment fund	Triodos Sicav II 100%	400
Luxembourg	Triodos S II Luxco S.A R.L.	Investment fund	Triodos Sicav II 100%	401
Luxembourg	Triodos Sicav I	Investment fund	Owned by investors	402
Luxembourg	Triodos Sicav II	Investment fund	Owned by investors	403

11.2.2 Conclusions

The following conclusions are drawn on the Triodos funds listed in Table 14:

- **Indications for tax avoidance by Triodos Bank**

No indications found.

- **Indications that services are used for tax avoidance by clients**

Like many other European financial institutions, Triodos Bank has set up funds in Luxembourg in the first place because this makes it possible to attract investors from many different jurisdictions. Triodos clarifies: “Triodos Investment Management BV (Triodos IM), a 100% subsidiary of Triodos Bank, is an entity incorporated under the laws of and resident in the Netherlands that provides asset management services for various investment funds resident in amongst others the Netherlands and Luxembourg.”⁴⁰⁴

Triodos Bank clarified that it does not offer its funds in Luxembourg to investors from outside the EU.⁴⁰⁵ This eliminates the risk that private investors from outside the EU use these funds structures and investment management activities to avoid income and/or withholding taxes. Otherwise, such a risk could possibly have been created, as Luxembourg was a classic tax haven in recent history with low tax rates and no information exchange with other jurisdictions. Under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU, but it does not exchange fiscal information with tax authorities in jurisdictions outside the EU.

11.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by Triodos Bank to special purpose vehicles.

11.4 Response Triodos Bank

Triodos Bank responded as follows to the final conclusions of this report:⁴⁰⁶

“Triodos Bank’s mission is to make money work for positive social, environmental and cultural change. Our approach includes to pay a fair share of tax. Therefore, as a basic rule, Triodos Bank pays its tax in the countries where its economic activities occur and comply with local tax laws and regulations, taking into account the purpose and spirit of the relevant clauses.”

Chapter 12 Van Lanschot

12.1 Introduction

Over the year ended December 31, 2013, Van Lanschot reported a total income of € 551.2 million and total expenses of € 513.8 million. This resulted in an operating profit before tax of € 37.4 million. Over this amount, Van Lanschot had to pay € 3.9 million of income tax (an average tax rate of 11%), resulting in a profit after tax of € 33.5 million.⁴⁰⁷ At the end of December 2013, Van Lanschot's total assets had a value of € 17,670 million and the number of FTEs was 1,808.⁴⁰⁸

The relatively low tax rate of Van Lanschot is explained by the *notional interest deduction* in Belgium (which reduced tax payments with € 2.1 million) and the *participation exemption* in the Netherlands for participations above 5% (minus € 4.6 million).⁴⁰⁹

In its annual report, Van Lanschot has published an overview of employees, operating income, costs, profit before tax and taxes paid per country.⁴¹⁰ Thereby Van Lanschot complies with the “Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten”.⁴¹¹ This regulation will probably enter in to force in the coming months and will require full country-by-country reporting - including data on profits and taxes per country - to be published together with the annual report, starting with the report on the financial year 2014 (see section 1.7.1).

12.2 Subsidiaries in tax havens

12.2.1 Active subsidiaries in tax havens

Table 15 shows the subsidiaries and funds of Van Lanschot situated in tax havens.

Table 15 Subsidiaries and funds of Van Lanschot in tax havens

Tax haven	Name	Objective	Ownership %	Source
Luxembourg	Kempen Alternative Investment Fund	Investment funds	Unknown	412
Luxembourg	Kempen International Funds	Investment funds	Unknown	413
Switzerland	F. van Lanschot Bankiers (Schweiz) AG	Banking and asset management	Unknown	414
Switzerland	F. van Lanschot Bankiers (Suisse) SA	Banking and asset management	Unknown	415

12.2.2 Conclusions

The following conclusions are drawn on the Van Lanschot subsidiaries listed in Table 15:

- **Indications for tax avoidance by Van Lanschot**

There are no indications for tax avoidance by Van Lanschot, as Van Lanschot's subsidiaries in Switzerland have substance: they undertake banking and asset management activities and have 24 employees.⁴¹⁶

- **Indications that services are used for tax avoidance by clients**

The banking and asset management activities of Van Lanschot in Switzerland could possibly create the risk that its services are used for tax avoidance by clients. Van Lanschot explains: “In Switzerland, Van Lanschot focuses on high net-worth private individuals from the Netherlands and Belgium and their international asset structures. We provide services to Dutch and Belgian citizens who are resident in Switzerland as well as to expats, new emigrants, Dutch and Belgian citizens who own or are considering purchasing holiday homes, and clients who have to contend with all kinds of international asset management issues, including in the areas of asset protection and privacy.”⁴¹⁷

Services related to “international asset structures” in combination with the fact that Switzerland still is a tax haven for wealthy individuals as transparency requirements are minimal, may potentially enable the avoidance of income taxes by private clients of Van Lanschot in their countries of residence. Van Lanschot states that there are no tax advantages intended and that Switzerland is also not a tax haven (anymore). “Switzerland provides information about its customers to the foreign tax authorities and will exchange data automatically with several countries in the future.”⁴¹⁸

This automatic data exchange has not yet been realized with many countries, however. Under pressure, Switzerland indeed has concluded an automatic fiscal information exchange agreement with the United States, but Switzerland has not done this with most other countries in the world.

Van Lanschot is aware of these risks. In the public summary of its *Policy on Fiscally Unacceptable Behaviour* (“Beleid Fiscaal Onoorbaar Gedrag”) Van Lanschot states clearly that it does not want to be involved in tax avoidance or tax evasion by its (private) clients. “This means that Van Lanschot aims to detect fiscally unacceptable behaviour of its clients as far as possible, to avoid that the bank is getting involved”.⁴¹⁹

While the summary of this policy statement already is clear, it would be good if Van Lanschot could clarify - possibly by publishing its full policy - which steps it has taken to exclude the possibility that investors use the services of its Swiss branch to avoid taxes in their countries of residence.

A much smaller risk is created by the fund structures in Luxembourg, which are set up in the first place because they make it possible to attract investors from many different jurisdictions. Van Lanschot clarifies: “The vast majority of all funds in the Netherlands is based in Luxembourg. The main reason for this is that many international investors and distributors rather offer Luxembourg funds than Dutch funds, particularly because the latter have different/unknown local regulations. The international investors/distributors of Van Lanschot rather buy big and well known Luxembourg funds. Tax benefits do not play a role in the choice of Luxembourg: neither Van Lanschot nor the customer achieve any tax benefits.”⁴²⁰

For European investors the risks are minimal, as under European pressure Luxembourg in March 2014 gave up its resistance against the tightening of the EU Savings Tax Directive and committed to automatic exchange of fiscal information within the EU. As Luxembourg does not exchange fiscal information with tax authorities in jurisdictions outside the EU, it remains possible that private investors from outside the EU use fund structures in Luxembourg to avoid income and/or withholding taxes, as Luxembourg does not exchange fiscal information with non-EU jurisdictions. It would be good if Van Lanschot could clarify which steps it has taken to exclude this possibility.

We conclude that for the investment management activities and fund structures set up by Van Lanschot in Switzerland and Luxembourg, the risk exists that they are used by private clients to avoid income and/or withholding taxes. It would be good if Van Lanschot could further clarify which steps it has taken to exclude this possibility.

12.3 Financial services provided to special purpose vehicles

There was no information found on financial services provided by Van Lanschot to special purpose vehicles.

12.4 Response Van Lanschot

Van Lanschot responded as follows to the final conclusions of this report:⁴²¹

“Van Lanschot has an extensive Fiscal Policy ‘Beleid Fiscaal Onoorbaar Gedrag’, which also applies to its foreign subsidiaries. A summary of this policy (in Dutch) is publicly available on our website. The policy describes the steps and measures taken to prevent tax avoidance. In addition to this policy, foreign subsidiaries have their own additional fiscal policy, which includes country specific steps and measures to avoid tax avoidance.”

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